THE GENERAL STATUTES OF NORTH CAROLINA

1987 CUMULATIVE SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
A. D. KOWALSKY, S. C. WILLARD, W. L. JACKSON,
K. S. MAWYER, P. R. ROANE AND S. S. WEST

Volume 2B, Part II

Annotated through 356 S.E.2d 26. For complete scope of annotations, see scope of volume page.

Place with Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Replacement Volume 2B, Part II contains the general laws of a permanent nature enacted by the General Assembly since publication of the replacement volume through the 1987 Regular Session which are within the scope of such volume, and brings to date the annotations included therein.

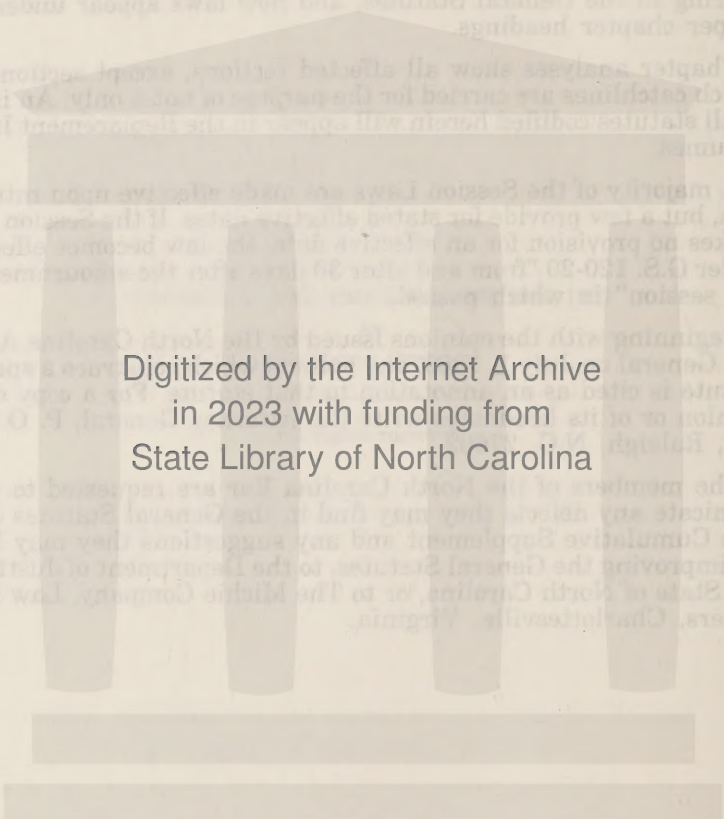
Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1987 Regular Session affecting Chapters 58 through 62 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 319, p. 464.
North Carolina Court of Appeals Reports through Volume 85, p. 173.
South Eastern Reporter 2nd Series through Volume 356, p. 26.
Federal Reporter 2nd Series through Volume 817, p. 761.
Federal Supplement through Volume 658, p. 304.
Federal Rules Decisions through Volume 115, p. 78.
Bankruptcy Reports through Volume 72, p. 618.
Supreme Court Reporter through Volume 107, p. 2210.
North Carolina Law Review through Volume 65, p. 847.
Wake Forest Law Review through Volume 22, p. 424.
Campbell Law Review through Volume 9, p. 206.
Duke Law Journal through 1987, p. 190.
North Carolina Central Law Journal through Volume 16, p. 222.
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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.

The General Statutes of North Carolina
1987 Cumulative Supplement

VOLUME 2B, Part II

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Article 38.

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Article 42.

Long-Term Care Insurance.

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Article 44.

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58-575. Agency contracts.
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Article 45.

Licensing of Agents, Brokers, Limited Representatives, and Adjusters.

(This Article is effective February 1, 1988, except § 58-614(d) is effective October 1, 1987)

58-610. (Effective February 1, 1988) Scope.
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58-612. (Effective February 1, 1988) Restricted license for overseas military agents.
58-613. (Effective February 1, 1988) Representation.
58-614. (Effective February 1, 1988, except subsection (d) is effective October 1, 1987) General license requirements.
58-615. (Effective February 1, 1988) License requirements.
58-616. (Effective February 1, 1988) Exemption from examination.
58-617. (Effective February 1, 1988) Appointment of agents.
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58-621. (Effective February 1, 1988) Countersignature and related laws.
58-622. (Effective February 1, 1988) Temporary licensing.
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58-624. (Effective February 1, 1988) Twisting with respect to insurance policies; penalties.
58-625. (Effective February 1, 1988) Discrimination forbidden.
58-626. (Effective February 1, 1988) Rebates and charges in excess of premium prohibited; exceptions.
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58-633. (Effective February 1, 1988) Agent, adjuster, etc., acting without a license or violating insurance law.
58-634. (Effective February 1, 1988) Fees.

SUBCHAPTER I. INSURANCE DEPARTMENT.

ARTICLE 1.

Title and Definitions.

§ 58-1. Title of the Chapter.

CASE NOTES

Chapter 58 does not provide the exclusive remedy for those damaged by unfair trade practices in the insurance industry. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

There is no authority which expressly declares that Chapter 58 is the exclusive vehicle of obtaining relief from those who engage in unfair trade practices in the insurance industry. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

Chapter 75 is applicable to the sale of insurance. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

Therefore, if a cause of action relating to insurance practices can arise under the first chapter, then surely it also can arise under the second. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

Section 75-1.1 provides a remedy for unfair trade practices in the insurance industry. Allegations of unfair fixing of insurance rates should be permitted to be raised under § 75-5 as well and reject defendant's claim that any expansion of Chapter 75 should not be limited only to § 75-1.1. Although § 75-1.1 contains a general prohibition of unfair methods of competition and unfair or deceptive practices affecting commerce, § 75-5 lists particular acts that constitute unfair or deceptive acts. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

Insurance Policy as Thing of Value. — Section 75-5(b)(3), (4) and (5) address fixing the price of "goods." Goods are defined in the statute to include "other things of value." An insurance policy is a thing of value. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61

N.C. App. 262, 300 S.E.2d 586 (1983); United Va. Bank v. Air-Lift Assocs., 79 N.C. App. 315, 339 S.E.2d 90 (1986).

§ 58-2. Definitions.

In this Chapter, unless the context otherwise requires,

(1) "Alien company" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) "Commissioner" means Commissioner of Insurance of North Carolina.

(3) "Company" or "insurance company" or "insurer" shall be deemed to include any corporation, association, partnership, society, order, individual or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations.

(4) "Department" means Department of Insurance of North Carolina.

(5) "Domestic company" means a company incorporated or organized under the laws of this State.

(6) "Foreign company" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(7) "NAIC" means the National Association of Insurance Commissioners.

(8) "Nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.

(9) "Person" includes an individual, aggregation of individuals, corporation, company, association and partnership.

(10) The singular form shall include the plural, and the masculine form shall include the feminine wherever appropriate. (1899, c. 54, s. 1; Rev., s. 4678; C.S., s. 6261; 1945, c. 383; 1971, c. 510, s. 1; 1987, c. 864, s. 34.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, inserted present subdivision (7) and redesignated former subdivisions (6a) to (8) as subdivisions (8) to (10).

§ 58-3. Contract of insurance.

CASE NOTES

Stated in Kraemer v. Moore, 67 N.C. App. 505, 313 S.E.2d 610 (1984).

§ 58-3.1. Warranties by manufacturers, distributors, or sellers of goods or services.

(a) As used in this section:

(1) "Goods" means all things that are moveable at the time of sale or at the time the buyer takes possession. "Goods" includes things not in existence at the time the transaction is entered into; and includes things that are furnished or used at the time of sale or subsequently in modernization, rehabilitation, repair, alteration, improvement, or construction on real property so as to become a part of real property whether or not they are severable from real property.

(2) "Services" means work, labor, and other personal services.

(b) Any warranty made solely by a manufacturer, distributor, or seller of goods or services without charge, or an extended warranty offered as an option and made solely by a manufacturer, distributor, or seller of goods or services for charge, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or any other remedial measure, including replacement of goods or repetition of services, shall not be a contract of insurance under this Chapter.

(c) Nothing in this section affects the provisions of Article 3C of this Chapter. Any warranty or extended warranty made by any person other than the manufacturer, distributor, or seller of the warranted goods or services is a contract of insurance. (1959, c. 866; 1975, cc. 643, 788; 1977, c. 185; 1987, c. 369.)

Effect of Amendments. — The 1987 amendment, effective June 15, 1987, rewrote this section, which formerly related to motor vehicle warranties.

§ 58-3.2. Real property warranties.

Any warranty relating to tangible personal property or fixtures to real property issued in connection with the sale of real property by a person as defined in this Article shall be a contract of insurance, except the following, which shall not be contracts of insurance:

(2) A warranty incidental to the sale of real property providing for the repair or replacement of the items covered by the warranty for defective parts and mechanical failure or resulting from ordinary wear and tear, which warranty excludes from its coverage damage from recognizable perils such as fire, flood, and wind, which perils do not relate to any defect in the items covered nor result from ordinary wear and tear. Any person issuing such warranties shall post a surety bond with the Secretary of State in the principal sum of not less than seventy-five thousand dollars ($75,000), which bond shall be subject to the approval of the Secretary of State. Any person to whom the warranty is issued has the right to institute an action to recover against the warrantor and the surety bond for breach of warranty. (1979, c. 773, s. 1; 1987, c. 864, s. 9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added the last two sentences of subdivision (2).

Article 2.

Commissioner of Insurance.

§ 58-6. Salary of Commissioner of Insurance.

The salary of the Commissioner of Insurance shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C.S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6; 1967, c. 1130; c. 1237, s. 6; 1969, c. 1214, s. 6; 1971, c. 912, s. 6; 1973, c. 778, s. 6; 1975, 2nd Sess., c. 983, s. 21; 1977, c. 802, s. 42.12; 1983, c. 761, s. 206; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

Editor's Note. — Session Laws 1983, c. 761, s. 259, and Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 are severability clauses.

Session Laws 1987, c. 738, s. 32(d) provides: "This section shall only effect [sic] longevity payments on and after July 1, 1987."

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, deleted "the same as for superior court judges as" following "shall be."

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

The 1987 amendment, effective July 1, 1987, added the second sentence.

§ 58-7.1. Chief deputy commissioner.

The Commissioner shall appoint and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner. He shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1987, c. 864, s. 19(a).)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "Department of Administration" for "Budget Bureau."

CASE NOTES

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586 (1983).

OPINIONS OF ATTORNEY GENERAL

Attendance at Meetings Through Delegates or Designated Subordinates. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are ex officio members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his ex officio membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the Honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

§ 58-7.2. Chief actuary.

The Commissioner shall appoint and may remove at his discretion a chief actuary, who shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1987, c. 864, s. 19(b).)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "Department of Administration" for "Budget Bureau."

§ 58-7.3. Other deputies, actuaries, examiners and employees.

The Commissioner shall appoint or employ such other deputies, actuaries, economists, examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees as may be found necessary for the proper execution of the work of the Department, at such compensation as shall be fixed and provided by the Department of Administration. If the Commissioner finds it necessary for the proper execution of the work of the Insurance Department to contract with persons, except to fill authorized employee positions, all those contracts, except those provided for in Articles 12B and 25A of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter 143. (1945, c. 383; 1981, c. 859, s. 94; 1987, c. 864, s. 20.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, rewrote this section.

§ 58-7.4. Appointments of committees or councils.

(a) As used in this section, the term "committee" means a collective body that consults with and advises the Commissioner or his designee in detailed technical areas; and the term "council" means a collective body that consults with and advises the Commissioner or his designee as representative of citizen advice in specific areas of interest.

(b) The Commissioner may create and appoint committees and councils, each of which shall consist of no more than 13 members unless otherwise provided by law. The members of any committee or council shall serve at the pleasure of the Commissioner and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with G.S. 138-5. Per diem, travel, and subsistence payments to members of committees or councils that are created in connection with federal programs shall be paid from federal funds unless otherwise provided by law. (1985, c. 666, s. 44.)

Editor's Note. — Session Laws 1985, c. 666, s. 85 makes this section effective upon ratification. The act was ratified July 10, 1985.

§ 58-7.5. Deposits; use of master trust.

Notwithstanding any other provision of law, the Commissioner is authorized to select a bank or trust company as master trustee to hold cash or securities to be pledged to the State when deposited with him pursuant to statute. Securities may be held by the master trustee in any form which, in fact, perfects the security interest of the State in the securities. The Commissioner shall by rule establish the manner in which the master trust shall operate. The master trustee may charge the person making the deposit reasonable fees for services rendered in connection with the operation of the trust. (1985, c. 666, s. 55; 1987, c. 864, s. 23.)

Editor's Note. — Session Laws 1985, c. 666, s. 85 makes this section effective upon ratification. The act was ratified July 10, 1985.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "person" for "company" in the last sentence.

§ 58-9. Powers and duties of Commissioner.

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

CASE NOTES

Stated in State v. Felts, — N.C. App. —, 339 S.E.2d 99 (1986).

§ 58-9.2. Examinations, investigations and hearings; notice of hearing.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

CASE NOTES

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Quoted in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586 (1983).

§ 58-9.3. Court review of orders and decisions.

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Applied in Unigard Mut. Ins. Co. v. Ingram, — N.C. App. —, 323 S.E.2d 442 (1984).

§ 58-9.4. Court review of rates and classification.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-9.5. Procedure on appeal under § 58-9.4.

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-9.6. Extent of review under § 58-9.4.

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Unlawful Delegation of Power to Make Final Agency Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the Commissioner made an unlawful delegation of his powers. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 392, 301 S.E.2d 702, 308 N.C. 548, 304 S.E.2d 242 (1983).

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

"Whole Record" Test Explained. — The "whole record" test requires the reviewing court to consider the record evidence supporting the Commissioner's order, to also consider the record evidence contradicting the Commissioner's findings, and to determine if the Commissioner's decision had a rational basis in the material and substantial evidence offered. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Burden of Proof on Rate Bureau. — While the commissioner's order must be based on material and substantial evidence in the record, the ultimate burden of proof to justify a rate adjustment and its amount is on the rate bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

The weight and credibility of conflicting evidence in a rate making hearing was for the commissioner to decide. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586 (1983).

§ 58-9.7. Civil penalties or restitution for violations; summary suspension of license or certificate.

(a) This section applies to any person who is subject to licensure or certification under the provisions of this Chapter, General Statutes Chapters 57, 57B or 85C, Articles 9B or 9C of General Statutes Chapter 66, or Article 9B of General Statutes Chapter 143.

(b) Whenever the Commissioner has reason to believe that any person has violated any of the provisions of the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or whenever the Commissioner has reason to believe that any person has violated Article 3A of this Chapter, the Commissioner may issue and serve upon that person a written statement of charges and a written notice of hearing, to be held at a time and place fixed in the notice. The date for the hearing shall not be less than 10 days after the date of service. It shall be sufficient to give such notice either by delivering it to the person charged or by sending the notice to the last known address of that person by certified mail, return receipt requested. At the time and place fixed for the hearing the person charged shall have an opportunity to answer the charges against him and present evidence on his behalf. Upon good cause shown, the Commissioner may permit any adversely affected person to intervene, appear, and be heard at the hearing by counsel or in person. The Commissioner may consolidate a hearing under this section with a hearing allowed under G.S. 58-54.6 where there is com-

mon subject matter involved and subject to procedural requirements set out in both sections being followed.

(c) In any case where a hearing pursuant to subsection (b) of this section results in the findings by the Commissioner of a knowing violation of any of the provisions of the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or findings by the Commissioner of a knowing violation of Article 3A of this Chapter, the Commissioner may, in addition to or in lieu of suspending or revoking the license or certification, apply to a court of competent jurisdiction for an order directing payment of a monetary penalty as provided in subsection (d) of this section or an order directing payment of restitution as provided in subsection (e) of this section, or both. Each day during which a violation occurs shall constitute a separate offense.

(d) Upon application by the Commissioner and a finding by the court of a knowing violation as specified in subsection (c) of this section, the court shall direct the payment of a penalty of not less than five hundred dollars ($500.00) nor more than forty thousand dollars ($40,000), in the discretion of the court. The penalty shall be payable to the Commissioner, who shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State. Payment of the civil penalty under this section shall be in addition to payment off any other penalty for a violation of the penal laws of this State.

(e) Upon application of the Commissioner and a finding by the court of a knowing violation as specified in subsection (c) of this section, the court may order the person who committed the violation to make restitution in an amount that would make whole any person harmed by the violation.

(f) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(g) Nothing in this section shall prevent the Commissioner from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty or restitution.

(h) Notwithstanding subsection (b) of this section, if the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, summary suspension of a license or certificate may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings to suspend, revoke, or refuse renewal provided for in subsection (b) of this section. The proceedings shall be promptly commenced and determined. (1985, c. 666, s. 35; 1987, c. 752, ss. 3-5; c. 864, s. 1.)

Editor's Note. — Session Laws 1985, c. 666, s. 85 makes this section effective upon ratification. The act was ratified July 10, 1985.

Effect of Amendments. — Session Laws 1987, c. 752, ss. 3-5, effective September 1, 1987, added "summary suspension of license or certificate" in the catchline, deleted "and to submit such agreement with respect to any civil penalty or restitution to the court pursuant to subsections (d) and (e) of this section for the court's adoption and approval" at the end of subsection (g), and added subsection (h).

Session Laws 1987, c. 864, s. 1, effec-

tive August 14, 1987, substituted "Article 9B" for "Articles 9A or 9B" in subsection (a).

§ 58-10. Commissioner to supervise local inspectors.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-16. Examinations to be made.

Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the Commissioner shall be satisfied, by such examination and evidence as he sees fit to make and require, that the company is otherwise duly qualified under the laws of the State to transact business therein. As often as once in three years or, in the Commissioner's discretion, as often as once in five years he shall personally or by his deputy visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the laws. He shall also make an examination of any such company whenever he deems it prudent to do so, or upon the request of five or more of the stockholders, creditors, policyholders, or persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that the company is in an unsound condition. Whenever the Commissioner deems it prudent for the protection of policyholders in this State he shall in like manner visit and examine, or cause to be visited and examined by some competent person appointed by him for that purpose, any foreign insurance company applying for admission or already admitted to do business in this State. Any domestic or foreign company examined under this section shall pay the proper charges incurred in the examination, including the expenses of the Commissioner or his deputy and the expenses and compensation of his assistants employed therein. The refusal of any insurer to submit to examination, or the refusal or failure of an insurer to pay the expenses of examination upon presentation of a bill therefor by the Commissioner, shall be grounds for the revocation or refusal of a license. The Commissioner is authorized to make public any such revocation or refusal of license as he may determine and to give his reasons therefor. The Commissioner shall promptly institute a civil action to recover the expenses of examination against any insurer which refuses or fails to pay. For these purposes the Commissioner or his deputy or persons making the examination shall have free access to all the books and papers of the insurance company that relate to its business, and to the books and papers kept by any of its agents, or to the books and papers of any affiliated or subsidiary corporations or partnerships that affect the affairs or financial condition of said company and may summon, administer oaths to, and examine as witnesses, the directors, officers, agents, and trustees of any such company, and any other person, affiliate or subsidiary in relation to its affairs, transactions, and condition. (1899, c. 54, s. 13;

Rev., s. 4692; C.S., s. 6275; 1945, c. 383; 1985, c. 666, s. 34; 1985 (Reg. Sess., 1986), c. 1013, s. 2.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, divided the former fourth sentence into the present fourth and fifth sentences, and in the present fifth sentence substituted "Any domestic or foreign company examined under this section shall pay the proper charges incurred in the examination" for "and such company shall pay the proper charges incurred in this examination."

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, inserted "or, in the Commissioner's discretion, as often as once in five years" in the second sentence.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-16.1. Examination dispensed with under certain circumstances.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-16.3. Examination, financial statement, and records of employers self-insuring for workers' compensation.

The provisions of G.S. 58-16, 58-16.2, 58-17, 58-18, 58-21, 58-22, 58-25, 58-25.1, 58-27, and 58-63 apply to employers that furnish proof of financial responsibility to the Commissioner under G.S. 97-93(a)(2) and to persons that administer workers' compensation self-insurance for such employers. (1985, c. 119, s. 5; 1985 (Reg. Sess., 1986), c. 1027, s. 52; 1987, c. 864, s. 29.)

Editor's Note. — Session Laws 1985, c. 119, s. 6, makes this section effective July 1, 1985.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, deleted "58-16.1" following "G.S. 58-16."

The 1987 amendment, effective August 14, 1987, substituted "financial" for "annual" in the catchline.

§ 58-18. Investigation of charges.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-18.1. Immunity from liability for reporting insurance fraud.

(a) For the purpose of this section, a "fraudulent insurance act" is committed by any person who, knowingly and with the intent to defraud: (1) presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent or employee thereof, any written statement as part of an insurance policy, or in support of an insurance policy, an application for the issuance of an insurance

policy, or the rating of an insurance policy, or a claim for payment or other benefit pursuant to an insurance policy, that he knows to contain materially false information concerning any material fact; or (2) conceals information concerning any material fact.

(b) In the absence of fraud or bad faith, no person is subject to civil liability for defamation for filing reports or furnishing other information, without malice, required by this Chapter or required by the Commissioner under the authority granted in this Chapter; and no cause of action for defamation arises against such person (1) for any information relating to suspected fraudulent insurance acts furnished to or received from the Commissioner, his designee, or law enforcement officials or their agents and employees; (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this Chapter; or (3) for any such information furnished in reports to the Commissioner or his staff, the Attorney General or his staff, the NAIC, or any organization established to detect and prevent fraudulent insurance acts, or their agents, employees or designees; nor shall the Commissioner or his staff, the Attorney General or his staff, or any representative of the NAIC, acting without malice, in the absence of fraud or bad faith, be subject to liability for defamation, and no cause of action for defamation arises against such person for the publication of any confidential report or bulletin related to the official activities of the Commissioner, the Attorney General, or the NAIC. Nothing in this section abrogates or modifies any common law or statutory privilege or immunity enjoyed by any person.

(c) During the course of an investigation of a suspected fraudulent insurance act, the Commissioner may personally or through his representative request any insurer to furnish copies of any information relative to that suspected act that is in the insurer's possession. The insurer shall release the information requested and cooperate with the Commissioner or his representative pursuant to this subsection. The information shall include without limitation to:

(1) Any insurance policy and application therefor relevant to a suspected fraudulent insurance act under investigation;
(2) Policy premium payment records;
(3) History of previous loss claims made by the insured;
(4) Material relating to the investigation by the insurer of the suspected act, including statements of any person, proof of loss, and any other relevant evidence. (1985 (Reg. Sess., 1986), c. 1013, s. 3; 1987, c. 864, s. 43.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 18, makes this section effective September 1, 1986.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "Commissioner or his staff, the Attorney General or his staff, the NAIC" for "Insurance Fraud Bureau of The National Association of Insurance Commissioners," substituted "or his staff, the Attorney General or his staff, or any representative of the NAIC" for "or any employee of the Insurance Frauds Bureau," and substituted "Commissioner, the Attorney General, or the NAIC" for "Insurance Frauds Bureau" in the first sentence of subsection (b).

§ 58-21. Annual, semiannual, or quarterly statements to be filed with Commissioner.

Every insurance company shall file in the office of the Commissioner of Insurance, on or before the first day of March in each year, in form and detail as the Commissioner of Insurance prescribes, a statement showing the business standing and financial condition of such company, association, or order on the preceding thirty-first day of December, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner of Insurance or some officer authorized by law to administer oaths. The Commissioner of Insurance shall, in December of each year, furnish to each of the insurance companies authorized to do business in the State two or more blanks adapted for their annual statements. Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of such annual statement for such company, for a reasonable period of time, not to exceed 30 days. Provided further, the Commissioner may, in his discretion, require the statement required by this section to be filed semiannually or quarterly by any insurance company, association, or order.

The Commissioner may require statements under this section, G.S. 58-21.1, G.S. 58-21.2, and G.S. 58-25.1 to be filed in a format that can be read by electronic data processing equipment; and may require such readable statements to be filed on a monthly basis. (1899, c. 54, ss. 72, 73, 83, 90, 97; 1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s. 4698; C.S., s. 6280; 1945, c. 383; 1957, c. 407; 1985, c. 666, ss. 50, 51; 1985 (Reg. Sess., 1986), c. 1013, s. 11.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, inserted "semiannual, or quarterly" in the catchline to this section and added the last sentence.

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, added the second paragraph.

§ 58-21.1. Annual statements by professional liability insurers; medical malpractice claim reports.

(a) In addition to the financial statements required by G.S. 58-21, every insurer, self-insurer, and risk retention group that provides professional liability insurance in the State shall file with the Commissioner, on or before the first day of February in each year, in form and detail as the Commissioner prescribes, a statement showing the items set forth in subsection (b) of this section, as of the preceding 31st day of December. The annual statement shall not be reported or disclosed to the public in a manner or format which identifies or could reasonably be used to identify any individual health care provider or medical center. The statement shall be signed and sworn to by the chief managing agent or officer of the insurer, self-insurer, or risk retention group, before the Commissioner or some officer authorized by law to administer oaths. The Commissioner shall, in December of each year, furnish to each such person that provides professional liability insurance in the State forms for the annual statements. The Commissioner may, for good cause, authorize an extension of the report due date upon written

application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(b) The statement required by subsection (a) of this section shall contain:

(1) Number of claims pending at beginning of year;
(2) Number of claims pending at end of year;
(3) Number of claims paid;
(4) Number of claims closed no payment;
(5) Number and amounts of claims in court in which judgment paid:
    a. Highest amount
    b. Lowest amount
    c. Average amount
    d. Median amount;
(6) Number and amounts of claims out of court in which settlement paid:
    a. Highest amount
    b. Lowest amount
    c. Average amount
    d. Median amount;
(7) Average amount per claim set up in reserve;
(8) Total premium collection;
(9) Total expenses less reserve expenses; and
(10) Total reserve expenses.

(c) Every insurer, self-insurer, and risk retention group that provides professional liability insurance to health care providers in this State shall file, within 90 days following the request of the Commissioner, a report containing information for the purpose of allowing the Commissioner to analyze claims. The report shall be in the form prescribed by the Commissioner. The form prescribed by the Commissioner shall be a form that permits the public inspection, examination, or copying of any information contained in the report: Provided, however, that any data or other characteristics that identify or could be used to identify the names or addresses of the claimants or the names or addresses of the individual health care provider or medical center against whom the claims are or have been asserted or any data that could be used to identify the dollar amounts involved in such claims shall be treated as privileged information and shall not be made available to the public. The Commissioner shall analyze these reports and shall file statistical and other summaries based on these reports with the General Assembly as soon as practicable after receipt of the reports. The Commissioner shall assess a penalty against any person that willfully fails to file a report required by this subsection. Such penalty shall be one thousand dollars ($1,000) for each day after the due date of the report that the person willfully fails to file: Provided, however, the penalty for an individual who self insures shall be two hundred dollars ($200.00) for each day after the due date of the report that the person willfully fails to file: Provided, however, that upon the failure of a person to file the report as required by this subsection, the Commissioner shall send by certified mail, return receipt requested, a notice to that person informing him that he has 10 business days after receipt of the notice to either request an extension of time or file the report. The Commissioner may, for good cause, authorize an extension of the report due date upon

written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(d) Every person that self-insures against professional liability in this State shall provide the Commissioner with written notice of such self-insurance, which notice shall include the name and address of the person self-insuring. This notice shall be filed with the Commissioner each year for the purpose of apprising the Commissioner of the number and locations of persons that self-insure against professional liability. (1975, 2nd Sess., c. 977, s. 6; 1985, c. 666, s. 53; 1987, c. 343.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, rewrote this section.

The 1987 amendment, effective June 12, 1987, rewrote this section, which formerly read "Every insurer authorized to write professional liability insurance in this State shall file with the Commissioner, along with the insurer's statement that is filed under G.S. 58-21, a report containing the information that is listed on the professional liability insurance supplement as promulgated and amended by the National Association of Insurance Commissioners."

§ 58-21.2. Reporting of product liability experience.

Every insurer providing product liability insurance or excess insurance above self-insurance to one or more manufacturers, sellers, or distributors in this State shall file with the Commissioner, along with the insurer's statement that is filed under G.S. 58-21, a report containing the information that is listed on the product liability insurance supplement as promulgated and amended by the National Association of Insurance Commissioners. (1979, c. 979, s. 1; 1983, c. 141; 1985, c. 666, s. 54.)

Effect of Amendments. — The 1983 amendment, effective Apr. 6, 1983, rewrote this section.

The 1985 amendment, effective July 10, 1985, substituted "statement that is filed under G.S. 58-21" for "annual statement."

§ 58-21.3. Insurance Regulatory Information System and similar program test data not public records.

Financial test ratios and other data received or generated by the Commissioner pursuant to the NAIC Insurance Regulatory Information System, any successor program, or any similar program developed by the Commissioner, are not public records and are not subject to Chapter 132 of the General Statutes or G.S. 58-11. (1985 (Reg. Sess., 1986), c. 1013, s. 9.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 18, makes this section effective July 15, 1986.

§ 58-22. Punishment for making false statement.

If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person making oath to or subscribing the statement shall be guilty of a misdemeanor and, upon conviction, shall be severally punished by a fine of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000). (1899, c. 54, s. 97; Rev., s. 3493; C.S., s. 6281; 1985, c. 666, s. 13.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "making oath to or subscribing the statement shall be guilty of a misdemeanor and, upon conviction, shall be severally punished by a fine of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000)" for "making oath to or subscribing the same shall severally be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000)" at the end of this section.

§ 58-25.1. Commissioner may require special reports.

The Commissioner may also address to any authorized insurer, rating organization, advisory organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be verified, if required by the Commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate. (1945, c. 383; 1985 (Reg. Sess., 1986), c. 1027, s. 8.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, inserted "rating organization, advisory organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility" in the first sentence.

§ 58-26. (Effective until February 1, 1988) Commissioner may require records, reports, etc., for agencies, agents and others.

(a) The Commissioner is empowered to make and promulgate reasonable rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, agents, brokers and producers of record, any of which agencies, agents, brokers or producers of record are defined by G.S. 58-39.4 and are licensed in this State or are transacting insurance business in this State to the end that such records and reports will accurately and separately reflect the insurance business transactions of such agency, agent, broker or producer of record in this State. Information from records required to be kept pursuant to the provisions of this section must be furnished the Commissioner on demand and the original records required to be kept pursuant to the provisions

§ 58-26 is set out twice. See headings for effective dates.

of this section shall be open to the inspection for the Commissioner or any other authorized employee described in G.S. 58-7.3 when demanded.

(b) Every insurance agency as defined by G.S. 58-39.4(a) transacting insurance business in this State shall at all times have appointed some person employed or associated with such agency who shall have the responsibility of seeing that such records and reports as are required pursuant to the provisions of this section are kept and maintained.

(c) Any person subject to the provisions of subsection (a) of this section who violates the provisions of this section or the rules and regulations prescribed by the Commissioner pursuant to the provisions of this section may after notice and hearing: for the first offense have his license or licenses (in case license be issued for more than one company in such person's case) suspended or revoked for not less than one month nor more than six months and for the second offense shall have his license or licenses (in case license be issued from more than one company in his case) suspended or revoked for the period of one year and such person shall not thereafter be licensed for one year from the date said revocation or suspension first became effective.

(d) For the purpose of enforcing the provisions of this section the Commissioner or any other authorized employee described in G.S. 58-7.3 is authorized and empowered to examine persons, administer oaths and require production of papers and records relative to this section.

(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-7.3 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record, which shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner or his authorized employee. Such expenses shall not exceed the per diem and allowances specified in G.S. 138-5; provided, the collection of such expense and allowance may, in the discretion of the Commissioner, be waived. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to examination or to pay the expenses of examination upon presentation of a bill therefor by the Commissioner or his authorized employee, is grounds for the revocation or refusal of a license. The Commissioner may institute a civil action to recover the expenses of examination against any person that refuses or fails to pay the expenses. (1971, c. 948, s. 1; 1987, c. 752, s. 1.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For the section as amended effective February 1, 1988, see the following section, also numbered § 58-26.

Effect of Amendments. — The 1987 amendment, effective September 1, 1987, added subsection (e).

§ 58-26 is set out twice. See headings for effective dates.

§ 58-26. (Effective February 1, 1988) Commissioner may require records, reports, etc., for agencies, agents and others.

(a) The Commissioner is empowered to make and promulgate reasonable rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, agents, brokers and producers of record, any of which agencies, agents, brokers or producers of record are licensed in this State or are transacting insurance business in this State to the end that such records and reports will accurately and separately reflect the insurance business transactions of such agency, agent, broker or producer of record in this State. Information from records required to be kept pursuant to the provisions of this section must be furnished the Commissioner on demand and the original records required to be kept pursuant to the provisions of this section shall be open to the inspection for the Commissioner or any other authorized employee described in G.S. 58-7.3 when demanded.

(b) Every insurance agency transacting insurance business in this State shall at all times have appointed some person employed or associated with such agency who shall have the responsibility of seeing that such records and reports as are required pursuant to the provisions of this section are kept and maintained.

(c) Any person subject to the provisions of subsection (a) of this section who violates the provisions of this section or the rules and regulations prescribed by the Commissioner pursuant to the provisions of this section may after notice and hearing: for the first offense have his license or licenses (in case license be issued for more than one company in such person's case) suspended or revoked for not less than one month nor more than six months and for the second offense shall have his license or licenses (in case license be issued from more than one company in his case) suspended or revoked for the period of one year and such person shall not thereafter be licensed for one year from the date said revocation or suspension first became effective.

(d) For the purpose of enforcing the provisions of this section the Commissioner or any other authorized employee described in G.S. 58-7.3 is authorized and empowered to examine persons, administer oaths and require production of papers and records relative to this section.

(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-7.3 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record, which shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner or his authorized employee. Such expenses shall not exceed the per diem and allowances specified in G.S. 138-5; provided, the collection of such expense and allowance may, in the discretion of the Commissioner, be waived. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to examination or to pay the expenses of examination upon presentation of a bill therefor by the Commissioner or his authorized employee, is grounds for the revocation or refusal of a license. The Commissioner may institute a

§ 58-26 is set out twice. See headings for effective dates.

civil action to recover the expenses of examination against any person that refuses or fails to pay the expenses. (1971, c. 948, s. 1; 1987, c. 629, ss. 14, 15; c. 752, s. 1.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-26.

Effect of Amendments. —

Session Laws 1987, c. 752, s. 1, effective September 1, 1987, added subsection (e).

Session Laws 1987, c. 629, ss. 14, 15, effective February 1, 1988, deleted "are defined by G.S. 58-39.4 and" preceding "are licensed in this State" near the middle of the first sentence of subsection (a), and deleted "as defined by G.S. 58-39.4(a)" following "Every insurance agency" at the beginning of subsection (b).

§ 58-27. Books and papers required to be exhibited.

It is the duty of any person having in his possession or control any books, accounts, or papers of any company licensed under this Chapter, to exhibit the same to the Commissioner of Insurance or to any deputy, actuary, accountant, or persons acting with or for the Commissioner of Insurance. Any person who shall refuse, on demand, to exhibit the books, accounts, or papers, as above provided, or who shall knowingly or willfully make any false statement in regard to the same, shall be subject to suspension or revocation of his license under this Chapter; and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1899, c. 54, s. 76; Rev., ss. 3494, 4697; 1907, c. 1000, s. 3; C.S., s. 6286; 1945, c. 383; 1985 (Reg. Sess., 1986), c. 1013, s. 6.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, inserted "be subject to suspension or revocation of his license under this Chapter; and shall" in the second sentence.

§§ 58-27.1, 58-27.2: Repealed by Session Laws 1985, c. 666, s. 11, effective July 10, 1985.

§§ 58-27.3 to 58-27.9: Reserved for future codification purposes.

Article 2A.

NAIC Insurance Regulatory Information System.

§ 58-27.10. Scope.

The provisions of this Article shall apply to all domestic, foreign, and alien insurers who are authorized to transact business in this State. (1985, c. 305, s. 1.)

§ 58-26 is set out twice. See headings for effective dates.

Editor's Note. — Session Laws 1985, c. 305, s. 2 makes this Article effective on ratification. The act was ratified June 3, 1985.

§ 58-27.11. Filing requirements.

(a) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall, on or before March 1 of each year, file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank, along with such additional filings as prescribed by the Commissioner, for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing that are subsequently filed with the Commissioner shall also be filed with the NAIC.

(b) Foreign insurers that are domiciled in a state that has a law or regulation substantially similar to this Article shall be deemed to be in compliance with this section. (1985, c. 305, s. 1.)

§ 58-27.12. Immunity.

In the absence of actual malice, or gross negligence, members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filings made pursuant to G.S. 58-27.11 shall be acting as agents of the Commissioner under the authority of this Article and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required under this Article. (1985, c. 305, s. 1.)

§ 58-27.13. Revocation of certificate of authority.

The Commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time that the Commissioner, for good cause, may have granted. (1985, c. 305, s. 1.)

§§ 58-27.14 to 58-27.19: Reserved for future codification purposes.

Article 2B.

Public Officers and Employees Liability Insurance Commission.

§ 58-27.20. Commission created; membership.

There is hereby created within the Department of Insurance a

Public Officers and Employees Liability Insurance Commission. The Commission shall consist of 11 members who shall be appointed as follows: the Commissioner of Insurance shall appoint six members as follows: two members who are members of the insurance industry who may be chosen from a list of three nominees submitted to the Commissioner of Insurance by the Independent Insurance Agents of North Carolina, Inc., and a list of three nominees submitted by the Carolinas Association of Professional Insurance Agents, North Carolina Division; one member who is employed by a police department who may be chosen from a list of three nominees submitted to the Commissioner of Insurance jointly by the North Carolina Police Chiefs Association and North Carolina Police Executives Association, and one member who is employed by a sheriff's department who may be chosen from a list of three nominees submitted to the Commissioner of Insurance by the North Carolina Sheriff's Association; one member representing city government who may be chosen from a list of three nominees submitted to the Commissioner of Insurance by the North Carolina League of Municipalities; and one member representing county government who may be chosen from a list of three nominees submitted to the Commissioner of Insurance by the North Carolina Association of County Commissioners; and the General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate. The Commissioner of Insurance or his designate shall be an ex officio member. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The Secretary of the Department of Crime Control and Public Safety or his designate shall be an ex officio member. The Attorney General or his designate shall be an ex officio member. One insurance industry member appointed by the Commissioner of Insurance shall be appointed to a term of two years and one insurance industry member shall be appointed to a term of four years. The police department member shall be appointed to a term of two years and the sheriff's department member shall be appointed to a term of four years. The representative of county government shall be appointed to a term of two years and the representative of city government to a term of four years. Beginning July 1, 1983, the appointment made by the General Assembly upon the recommendation of the Speaker shall be for two years, and the appointment made by the General Assembly upon the recommendation of the President of the Senate shall be for four years. Except as provided in this section, if any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member. After the initial terms established herein have expired, all appointees to the Commission shall be appointed to terms of four years.

The Commission members shall elect the chairman and vice-chairman of the Commission. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good cause. (1979, c. 325, s.

1; 1981 (Reg. Sess., 1982), c. 1191, ss. 24-26; 1983, c. 543, ss. 1, 2; 1985, c. 666, ss. 76, 77, 79.)

Editor's Note. — This Article is former Part 20 of Article 9 of Chapter 143B, as rewritten and recodified by Session Laws 1985, c. 666, s. 79, effective July 10, 1985. Where appropriate, the historical citations to the sections in the former Part have been added to corresponding sections in the Article as rewritten and recodified.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "Administration" for "Insurance" in the first sentence and substituted "Commissioner of Insurance" for "Governor" in seven places.

§ 58-27.21. Meetings of Commission; compensation.

The Commission shall meet at least four times per year, on or about January 15, April 15, July 15, October 15 and upon call of the chairman. The members shall receive no compensation for attendance at meetings, except a per diem expense reimbursement. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission. (1979, c. 325, s.1; 1981 (Reg. Sess., 1982), c. 1191, s. 27; 1985, c. 666, s. 79.)

§ 58-27.22. Powers and duties of Commission.

The Commission may acquire from an insurance company or insurance companies a group plan of professional liability insurance covering the law-enforcement officers and/or public officers and employees of any political subdivision of the State. The Commission shall have full authority to negotiate with insurance companies submitting bids or proposals and shall award its group plan master contract on the basis of the company or companies found by it to offer maximum coverage at the most reasonable premium. The Commission is authorized to enter into a master policy contract of such term as it finds to be in the best interests of the law-enforcement officers and/or public officers and employees of the political subdivisions of the State, not to exceed five years. The Commission, in negotiating for such contract, is not authorized to pledge or offer the credit of the State of North Carolina. The insurance premiums shall be paid by the political subdivisions whose employees are covered by the professional liability insurance. Any political subdivision may elect coverage for any or all of its employees on a departmental basis; provided all employees in a department must be covered if coverage is elected for that department. Nothing contained herein shall be construed to require any political subdivision to participate in any group plan of professional liability insurance.

The Commission may, in its discretion, employ professional and clerical staff whose salaries shall be as established by the State Personnel Commission.

Should the Commission determine that reasonable coverage is not available at a reasonable cost, the Commission may undertake

such studies and inquiries into the situation and alternatives, including self insurance and State administered funds, as the Commission deems appropriate. The Commission shall then bring before the General Assembly such recommendations as it deems appropriate.

The Commission may acquire information regarding loss ratios, loss factors, loss experience and other such facts and figures from any agency or company issuing professional liability insurance covering public officers, employees or law-enforcement officers in the State of North Carolina. Such information shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes where it names the company divulging such information, but the Commission may make public such information to show aggregate statistics in respect to the experience of the State as a whole. The information shall be provided to the Commission upon its written demand and shall be submitted to the Commission by such company or companies upon sworn affidavit. If any agency or company shall fail or refuse to supply such information to the Commission within a reasonable time following receipt of the demand, the Commission may apply to the Superior Court sitting in Wake County for appropriate orders to enforce the demand.

For purposes of this section, the term "political subdivision" includes any county, city, town, incorporated village, sanitary district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, parking authority, local ABC boards, special airport district, airport authority, soil and water conservation district created pursuant to G.S. 139-5, fire district, volunteer or paid fire department, rescue squads, city or county parks and recreation commissions, area mental health boards, area mental health, mental retardation and substance abuse authority as described in G.S. 122C-117, domiciliary home community advisory committees, county and district boards of health, nursing home advisory committees, county boards of social services, local school administrative units, local boards of education, community colleges, and all other persons, bodies, or agencies authorized or regulated by Chapters 108A, 115C, 115D, 118, 122C, 130A, 131A, 131D, 131E, 153A, 160A, and 160B of the General Statutes. (1979, c. 325, s. 1; 1983, c. 543, s. 3; 1985, c. 666, s. 79; 1985 (Reg. Sess., 1986), c. 1027, s. 30; 1987, c. 564, s. 9.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, substituted the terms "political subdivision" and "political subdivisions" for references to counties and municipalities in the first paragraph and added the last paragraph.

The 1987 amendment, effective July 6, 1987, substituted "community colleges" for "community colleges and technical institutes" in the last sentence.

§ 58-27.23. Professional liability insurance for State officials.

(a) The Commission may acquire professional liability insurance covering the officers and employees, or any group thereof, of any State department, institution or agency or any community college or technical college. Premiums for such insurance shall be paid by the requesting department, institution, agency, community college

or technical college at rates established by the Commission, from funds made available to such department, institution, agency, community college or technical college for the purpose.

(b) The Commission, pursuant to this section, may acquire professional liability insurance covering the officers and employees, or any group thereof, of a department, institution or agency of State government or a community college or technical college only if the coverage to be provided by such policy is in excess of the protection provided by Articles 31 and 31A of General Statutes Chapter 143.

(c) The purchase, by any State department, institution, agency, community college or technical college of professional liability insurance covering the law-enforcement officers, officers or employees of such department, institution, agency, community college or technical college shall not be construed as a waiver of any defense of sovereign immunity by such department, institution, agency, community college or technical college. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

(d) The payment, by any State department, institution, agency, community college or technical college of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, institution, agency, community college or technical college is hereby declared to be for a public purpose. (1981, c. 1109, s. 3; 1985, c. 666, s. 79; 1987, c. 301.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, so as to include references to community colleges and technical colleges.

§ 58-27.24. Commission to act as liaison; meetings of Commission.

The Commission shall act as liaison between the insurance company or companies with which it contracts, their servicing agent and the insureds. The Commission shall give notice of its meetings to the company or companies and to all insureds. The Commission shall attempt to resolve such difficulties as arise in the servicing and administration of the program of insurance between the company and insureds. (1979, c. 325, s. 1; 1985, c. 666, s. 79.)

§ 58-27.25. Contract conditions.

The Commission, in procuring and negotiating for the contract of insurance herein described shall include in any procurement document the following conditions, which are not subject to negotiation and which are deemed a part of the said contract when entered into:

(1) The master policy shall be issued in the name of the Commission and shall include all governmental entities for which coverage was requested in the procurement document.

(2) The company or companies selected must name a servicing agent resident in North Carolina who shall issue all certificates, collect all premiums, process all claims, and be responsible for all processing, service and administration of

the program of insurance provided. (1979, c. 325, s. 1; 1985, c. 666, s. 79.)

§ 58-27.26. Payment a public purpose.

The payment by any county or municipality of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or public officials or employees of such subdivision of government, is declared to be for a public purpose. (1979, c. 325, s. 1; 1985, c. 666, s. 79.)

§§ 58-27.27 to 58-27.29: Reserved for future codification purposes.

Article 2C.

State Fire Commission.

§ 58-27.30. State Fire Commission created; membership.

(a) There is created the State Fire Commission of the Department of Insurance, which shall be composed of 12 voting members to be appointed as follows:

(1) The Commissioner of Insurance shall appoint nine members, two from nominations submitted by the North Carolina State Fireman's Association, one from nominations submitted by the North Carolina Association of Fire Chiefs, one from nominations submitted by the North Carolina Society of Fire Service Instructors, one from nominations submitted by the North Carolina Association of County Fire Marshals, one from nominations submitted by the North Carolina Fire Marshal's Association, one mayor or other elected city official nominated by the President of the League of Municipalities, one county commissioner nominated by the President of the Association of County Commissioners, and one from the public at large;

(2) The Governor shall appoint one member from the public at large; and

(3) The General Assembly shall appoint two members from the public at large, one upon the recommendation of the Speaker of the House of Representatives pursuant to G.S. 120-121, and one upon the recommendation of the President of the Senate pursuant to G.S. 120-121.

Public members may not be employed in State government and may not be directly involved in fire fighting.

(b) Of the members initially appointed by the Commissioner of Insurance, the nominees of the North Carolina State Firemen's Association and the nominee of the North Carolina Association of Fire Chiefs shall serve three-year terms; the nominees from the North Carolina Society of Fire Service Instructors, the North Carolina Association of County Fire Marshals, and the North Carolina Fire Marshal's Association shall serve two-year terms; and the mayor or other elected city official, the county commissioner, and

the member from the public at large shall serve one-year terms. The Governor's initial appointee shall serve a three-year term. The General Assembly's initial appointees shall serve two-year terms. Thereafter all terms shall be for three years.

(c) Vacancies shall be filled by the original appointer in the same manner as the original appointment was made, except that vacancies in the appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(d) Appointed members shall serve until their successors are appointed and qualified.

(e) The following State officials, or their designees, shall serve by virtue of their offices as nonvoting members of the Commission: the Commissioner of Insurance, the Commissioner of Labor, the State Auditor, the Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Natural Resources and Community Development, and the President of the Department of Community Colleges.

(f) Members of the State Fire Commission shall receive per diem and necessary travel and subsistence allowances in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as appropriate. (1977, c. 1064, s. 1; 1981, c. 791, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1191, ss. 21, 22; 1983, c. 840, ss. 1, 2; 1985, c. 757, s. 167(b), (d).)

Editor's Note. — This Article is former Part 4 of Article 11 of Chapter 143B, as recodified by Session Laws 1985, c. 757, s. 167(b), effective July 15, 1985.

Session Laws 1985, c. 757, s. 167(g) provides:

"On September 30, 1985, all voting members of the State Fire Commission shall cease to be members of the Commission. New voting members shall be appointed in accordance with G.S. 58-27.30, to begin serving on the Commission on October 1, 1985. Nominations for the nine members to be appointed by the Commissioner of Insurance shall be submitted within 30 days after the ratification of this section, and the Commissioner shall appoint the members within 60 days after the ratification of this section. The appointments to be made by the General Assembly shall be made during the 1985 Regular Session. The appointment to be made by the Governor shall be made within 60 days after the ratification of this section."

Effect of Amendments. — The 1985 amendment, effective July 15, 1985, rewrote this section.

§ 58-27.31. State Fire Commission — Powers and duties.

(a) The State Fire Commission shall have the following powers and duties:

(1) To formally adopt a State Fire Education and Training Plan and a State Master Plan for Fire Prevention and Control;

(2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina;

(3) To increase the professional skills of fire protection and fire-fighting personnel;

(4) To encourage public support for fire prevention and control;

(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

(6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the National Fire Prevention and Control Administration of the United States Department of Commerce;

(7) To make studies and recommendations for the improvement of fire prevention and control in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and for effective fire prevention and control education;

(8) To set objectives and priorities for the improvement of fire prevention and control throughout the State;

(9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and for improving fire prevention and control administration and planning within the State of North Carolina;

(10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, planning and administration;

(11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control administrative improvements and crime reduction plans;

(12) To apply for, receive, disburse and audit the use of funds received for [from] any public and private agencies and instrumentalities for fire prevention and control, its administration and plans therefor;

(13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(14) To provide technical asistance to State and local fire prevention and control agencies in developing programs for improvement of the fire prevention and control system;

(14a) To serve as a central office for the collection and dissemination of information relative to fire service activities and programs in State government. All State government agencies conducting fire service related programs and activities shall report the status of these programs and activities to the State Fire Commission on a quarterly basis and they shall also report to the State Fire Commission any new programs or changes to existing programs as they are implemented;

(14b) To establish voluntary minimum professional qualifications for all levels of fire service personnel;

(14c) To prepare an annual report to the Governor on its fire prevention and control activities and plans, and to recommend legislation concerning fire prevention and control; and

(15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(b) Each State agency involved in fire prevention and control shall furnish the executive director of the Fire Commission such

information as may be required to carry out the intent of this section. (1977, c. 1064, s. 1; 1981, c. 791, ss. 3, 4; 1985, c. 757, s. 167(b).)

§ 58-27.32. State Fire Commission — Organization; rules and regulations; meetings.

(a) Organization. — The State Fire Commission shall elect from its voting members a chairman and vice-chairman to serve as provided by the rules adopted by the Commission.

(b) Rules and Regulations. — The State Fire Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for grants-in-aid for fire protection and fire-fighting purposes which may be made available to the State by the federal government. The State Fire Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the United States Fire Administration, Federal Emergency Management Agency. In respect to such grants, the State Fire Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control agencies.

All actions taken by the State Fire Commission in the performance of its duties shall be implemented and administered by the Department of Insurance.

(c) Meetings. — The State Fire Commission shall meet quarterly. Five members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1; 1981, c. 791, s. 5; 1983, c. 840, s. 3; 1985, c. 757, s. 167(b), (c), (e), (f).)

Effect of Amendments. — The 1985 amendment, effective July 15, 1985, rewrote subsection (a), substituted "Insurance" for "Crime Control and Public Safety" in the last paragraph of subsection (b), and in subsection (c) substituted "five members" for "six members" in the second sentence.

§ 58-27.33. State Fire Commission; staff.

(a) There shall be an executive director nominated by the State Fire Commission with direct responsibilities to the Commission, who shall be appointed by the Commissioner of Insurance.

(b) Personnel of the Department of Insurance shall serve as staff to the State Fire Commission. The Department of Insurance shall provide the clerical and professional services required by the State Fire Commission and, at the direction of the State Fire Commission, shall develop and administer the State Master Plan for Fire Prevention and Control, the State Fire Education and Training Plan, and any additional related programs as may be established by, or assigned to, the State Fire Commission. (1977, c. 1064, s. 1; 1985, c. 757, s. 167(b), (i).)

Effect of Amendments. — The 1985 amendment, effective July 15, 1985, rewrote this section.

§ 58-27.34. State Fire Commission — Fiscal affairs.

All funds for the operation of the State Fire Commission and its staff shall be appropriated to the Department of Insurance. All such funds shall be held in a separate or special account on the books of the Department of Insurance with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as expenditures of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the State Fire Commission, within the limits of funds appropriated to it by the State and made available to it by the federal government. (1957, c. 269, s. 1; 1977, c. 1064, s. 1; 1985, c. 757, s. 167(b), (c).)

Effect of Amendments. — The 1985 amendment, effective July 15, 1985, substituted "Insurance" for "Crime Control and Public Safety" throughout this section.

Article 3.

General Regulations for Insurance.

§ 58-28. State law governs insurance contracts.

CASE NOTES

Provision in Policy That Its Terms Are Controlled by State Statute. — Where the policy itself provides that its terms are controlled by a statute of the state wherein the property is located, which conflicts with a policy provision and does not conflict with federal law, the courts may apply state statutory law in appropriate circumstances by virtue of such policy provision, but never merely because it is the law of the forum. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

Application of State Law to Federal Flood Insurance Issues. — To determine if state statutory law where the property is located should apply to federal flood insurance issues, three factors must be considered: (1) the terms of the policy; (2) applicable state statutory law; and (3) applicable federal statutory or decisional law. Where no term in the policy addresses an issue in dispute, federal law is applied. If no decisional or statutory federal law exists the federal courts may apply the traditional common-law technique of decision by drawing upon standard insurance law principles. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

§ 58-30. Statements in application not warranties.

CASE NOTES

I. IN GENERAL.

What Representations Are Material. —

A representation in an application for insurance that influences the insurance company to accept the risk and enter into the contract is a material representation. Whether such representations are material depends upon the circumstances in each case and is usually, though not always, a question of fact for

the jury. Michael v. St. Paul Fire & Marine Ins. Co., 65 N.C. App. 50, 308 S.E.2d 727 (1983).

Policy Avoided by False, etc. — In accord with 5th paragraph in original. See Sauls v. Charlotte Liberty Mut. Ins. Co., 62 N.C. App. 533, 303 S.E.2d 358 (1983).

§ 58-30.1. Additional or coinsurance clause.

CASE NOTES

Replacement cost provisions under which the insureds could only collect the full cost of repair or replacement of their dwelling for at least 80% of its full replacement cost and under which they would become coinsurers or self-insurers for the difference between the amount of coverage and 80% of the full replacement cost, if the insurance maintained on the property was for less than 80% of its full replacement cost, are essentially coinsurance provisions. Surrant v. Grain Dealers Mut. Ins. Co., 74 N.C. App. 288, 328 S.E.2d 16 (1985).

§ 58-30.3. Discriminatory practices prohibited.

(a) No insurer shall after September 1, 1975, base any standard or rating plan for private passenger automobiles or motorcycles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured.

(b) No insurer shall refuse to insure or refuse to continue to insure an individual, limit the amount, extent, or kind of coverage available to an individual, or charge an individual a different rate for the same coverage, solely because of blindness or partial blindness or deafness or partial deafness. With respect to all other physical conditions, including the underlying cause of the blindness or partial blindness or deafness or partial deafness, individuals who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted individuals or individuals whose hearing is not impaired. Refusal to insure or refusal to continue to insure includes denial by an insurer providing disability insurance on the grounds that the policy defines disability as being presumed in the event that the insured loses his eyesight or hearing: Provided that an insurer providing disability insurance may except disability coverage for blindness, partial blindness, deafness, or partial deafness when those conditions existed at the time the application was made for the disability insurance policy. The provisions of this subsection shall be construed to supplement the provisions of G.S. 58-54.4(7) and G.S. 168-10. This subsection shall apply only to the underwriting of life insurance, accident, health, or accident and health insurance under this Chapter and General Statutes Chapter 57, and annuities. (1975, c. 666, s. 1; 1985, c. 267, s. 1.)

Effect of Amendments. — The 1985 amendment, effective May 28, 1985, and applicable to life or accident and health policies, contracts, or certificates, or annuities that are delivered, issued for delivery, or renewed 90 days after the effective date of the act, designated the first paragraph as subsection (a) and added subsection (b).

§ 58-30.4. (Delayed effective date of repeal — See note) Revised classifications and rates; safe driver insurance plan.

The North Carolina Rate Bureau shall promulgate a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) motor vehicles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications to wit: (i) pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Rate Bureau shall promulgate a revised subclassification plan which appropriately reflects the statistical driving experience and exposure of insureds in each of the four basic classifications provided for above, except that no subclassification shall be promulgated based, in whole or in part, directly or indirectly, upon the age or sex of the person insured. Such revised subclassification plan may provide for premium surcharges for insureds having less than two years' driving experience as licensed drivers, and shall provide for premium surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents, or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof. The subclassification plan to be effective January 1, 1984, shall provide that in a policy insuring more than one motor vehicle, driving record premium surcharges for chargeable accidents and moving traffic violations shall be distributed equally among the motor vehicles so insured. The classification plans and subclassification plans so promulgated by the Bureau shall be subject to the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-124.20, 58-124.21, and 58-124.22. As used in this section, the term "conviction" includes a determination that a person is responsible for an infraction as provided in Article 66 of Chapter 15A of the General Statutes. (1975, c. 666, s. 1; 1977, c. 828, s. 9; 1979, c. 824, s. 7; 1981, c. 916, s. 3a; 1983, c. 763, ss. 2, 3; 1987, c. 864, s. 26; c. 869, s. 7.)

Repeal of Section. — Session Laws 1987, c. 869, s. 20 makes the repeal of this section, by s. 7 of c. 869, effective six months after the date the revised subclassification plan is approved by the Commissioner of Insurance as provided in s. 17 of the act.

Session Laws 1987, c. 869, s. 17 provides: "The North Carolina Rate Bureau shall file in accordance with G.S. 58-124.31, a revised subclassification plan to reflect the provisions of this act. The Bureau shall make the filing no later than February 1, 1988, and such plan shall become effective six months after the date the plan is approved by the Commissioner. Such revised plan shall apply only to new and renewal nonfleet private passenger motor vehicle insurance policies written on and after the effective date of the plan. With respect to any moving traffic violations that occur before the effective date of the plan, the surcharge levied under G.S. 58-248.34(f) shall be determined by the revised subclassification plan. With respect to at fault accidents that occur before the effective date of the plan, the premium surcharges under the plan shall be determined by the subclassification plan in effect at the time such at fault accidents occur."

Session Laws 1987, c. 869, s. 19 contains a severability clause.

Effect of Amendments. —

The 1983 amendment, effective July 15, 1983, rewrote the next-to-last sentence. The act also amended the section catchline.

§ 58-30.4 has a delayed repeal date. See notes for date.

Session Laws 1987, c. 864, s. 26, effective August 14, 1987, added the last sentence.

CASE NOTES

When a revised classification and rate plan change is filed, the last sentence in this section provides that "the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only § 58-124.21(a) speaks to any duty of the commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 392, 301 S.E.2d 702, 308 N.C. 548, 304 S.E.2d 242 (1983).

§ 58-30.5. (Delayed effective date of repeal — See note) Major and minor chargeable accidents and certain speeding traffic violations under the Safe Driver Insurance Plan.

(a) The subclassification plan promulgated pursuant to G.S. 58-30.4 shall provide for separate surcharges for major chargeable accidents and minor chargeable accidents. "Major chargeable accident" means a chargeable accident that results in (a) bodily injury or death or (b) damage in excess of five hundred dollars ($500.00) to any combination of (i) property not owned by the applicant nor by any current resident operator and (ii) his motor vehicle. "Minor chargeable accident" means a chargeable accident that results in damage of five hundred dollars ($500.00) or less to any combination of (i) property not owned by the applicant nor by any current resident operator and (ii) his motor vehicle.

(b) The subclassification plan shall provide that with respect to a conviction for a "violation of speeding 10 miles per hour or less over the speed limit" there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal. As used in this section, the term "conviction" includes a determination that a person is responsible for an infraction as provided in Article 66 of Chapter 15A of the General Statutes.

(c) The North Carolina Rate Bureau shall promulgate a revised subclassification plan to reflect the provisions of this section. Such plan shall be subject to the filing, hearing, disapproval, review, and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-124.20, 58-124.21, and 58-124.22. The Bureau shall make a filing no later than September 1, 1983, and such plan so promulgated shall become effective January 1, 1984. Such plan shall apply only to chargeable accidents and violations of speeding 10 miles per hour or less over the speed limit that occur on or after January 1, 1984. With respect to any chargeable accidents or violations of speeding 10 miles per

hour or less over the speed limit occurring prior to January 1, 1984, the surcharge and period for which such surcharge is applied and collected shall be determined by the subclassification plan in effect at the time such chargeable accident or violation of speeding 10 miles per hour or less over the speed limit occurs.

(d) For the purposes of subsections (b) and (c) of this section, a "violation of speeding 10 miles per hour or less over the speed limit" does not include the offense of speeding in a school zone in excess of the posted school zone speed limit.

(e) Any adjustments in rates for nonfleet passenger motor vehicle insurance to offset any reduction in premium level due to the implementation of the provisions of this section shall be made through adjustments to the base rates for the affected coverages. Such adjustments shall be filed by the Bureau with the Commissioner in accordance with the standards and procedures of Articles 12B and 25A of this Chapter. (1983, c. 763, s. 1; 1987, c. 864, ss. 2, 27; c. 869, s. 8.)

Editor's Note. — Session Laws 1983, c. 763, s. 4, makes this section effective upon ratification. The act was ratified July 15, 1983.

Repeal of Section. — Session Laws 1987, c. 869, s. 20 makes the repeal of this section, by s. 8 of c. 869, effective six months after the date the revised subclassification plan is approved by the Commissioner of Insurance as provided in s. 17 of the act.

Session Laws 1987, c. 869, s. 17 provides: "The North Carolina Rate Bureau shall file in accordance with G.S. 58-124.31, a revised subclassification plan to reflect the provisions of this act. The Bureau shall make the filing no later than February 1, 1988, and such plan shall become effective six months after the date the plan is approved by the Commissioner. Such revised plan shall apply only to new and renewal nonfleet private passenger motor vehicle insurance policies written on and after the effective date of the plan. With respect to any moving traffic violations that occur before the effective date of the plan, the surcharge levied under G.S. 58-248.34(f) shall be determined by the revised subclassification plan. With respect to at fault accidents that occur before the effective date of the plan, the premium surcharges under the plan shall be determined by the subclassification plan in effect at the time such at fault accidents occur."

Session Laws 1987, c. 869, s. 19 contains a severability clause.

Effect of Amendments. — Session Laws 1987, c. 864, ss. 2 and 27, effective August 14, 1987, added the last sentence of subsection (b) and deleted a former final sentence of subsection (e), which read "In no event shall such adjustments be deemed to be changes in the total combined general rate level within the meaning of G.S. 58-124.26."

§ 58-31.1. Proof of loss forms required to be furnished.

CASE NOTES

Section places burden upon insurer to provide proof of loss form to insured. If the insurer fails to do so, the insured need only provide written proof of the occurrence, character and extent of loss. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

No Conflict with Federal Rule of Substantial Compliance. — There is no conflict between the federal rule of substantial compliance and the North Carolina rule requiring proof of occurrence, character and extent of loss. In order to substantially comply the proof must at least supply enough information to satisfy the reason behind the rule. Proof of loss supplies evidence of the particulars of the occurrence and enables the insurer to determine its liability and the amount thereof. Both the federal authority and state statute promote this

general policy. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

No Conflict with Federal Insurance Programs. — Federal case authority most closely addressing the issue of sufficiency of proof of loss under a federal insurance program does not conflict with this section. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

§ 58-31.2: Repealed by Session Laws 1985, c. 666, s. 10, effective July 10, 1985.

§ 58-34. Publication of assets and liabilities; penalty for failure.

When any company publishes its assets, it must in the same connection and with equal conspicuousness publish its liabilities computed on the basis allowed for its annual statements; and any publications purporting to show its capital must exhibit only the amount of such capital as has been actually paid in cash. Any company or agent thereof who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). (1899, c. 54, ss. 18, 96; Rev., ss. 3492, 4812; C.S., s. 6293; 1985, c. 666, s. 14.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted the language beginning "who violates this section" and ending "one thousand dollars ($1,000)" for "violating the provision of this section shall be punished by a fine of not less than fifty ($50.00) nor more than two hundred dollars ($200.00)" at the end of this section.

§ 58-39.3: Repealed by Session Laws 1985, c. 572, s. 2, effective October 1, 1985.

Cross References. — See now §§ 58-72.1 through 58-72.3.

§ 58-39.4: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

CASE NOTES

Applied in City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

Quoted in Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 311 N.C. 62, 316 S.E.2d 256 (1984).

§ 58-39.4 has a delayed repeal date. See notes for date.

§ 58-40. (Repealed effective February 1, 1988) Agents and others must procure license.

(a) Every agent of any insurance company authorized to do business in this State shall be required to obtain from the Commissioner of Insurance a license under the seal of his office, showing that the company for which he is agent is licensed to do business in this State and that he has been appointed an agent of such company as defined in G.S. 58-39.4 and is duly authorized to act for such company within the scope of the agency designated on such license. Provided, however, any life insurance agent duly licensed for a life insurer authorized to transact business in this State may transact business for any subsidiaries or affiliates of said life insurer that are duly licensed in this State to transact the business of life insurance without securing additional licenses, provided a certified copy of a resolution adopted by the board of directors of each of the life insurers requesting such authority is filed with the Commissioner by each of the life insurers and renewed and refiled whenever deemed necessary by the Commissioner and upon the payment of any fee otherwise required as if a license had been issued. The resolution shall also designate the primary insurer for which all of the company's life insurance agents must be licensed pursuant to this section, and said license must be in full force and effect in order to transact business for any of the affiliated or subsidiary life insurers. While acting as a life insurance agent for any of the affiliated or subsidiary insurers such life insurance agent and such affiliated or subsidiary insurer shall have all the duties, responsibilities, and legal requirements that apply to life insurance agents generally under this Chapter and the common law.

(b) Every insurance adjuster shall be required to obtain from the Commissioner of Insurance a license under the seal of his office showing that he is duly authorized to act as an adjuster.

(c) Every motor vehicle damage appraiser shall be required to obtain from the Commissioner of Insurance a license under the seal of his office showing that he is duly authorized to act as a motor vehicle damage appraiser.

(e) Each license issued by the Commissioner under this section, G.S. 58-40.1, or G.S. 58-41.2 shall be valid for a period of one year. Upon the receipt of an application for renewal and the renewal fee prescribed by G.S. 105-228.7, the Commissioner shall, if the applicant is otherwise qualified, renew the license: Provided that the Commissioner is not required to print licenses for the purpose of renewing licenses. The licenses issued under this section, G.S. 58-40.1, G.S. 58-41.2, and G.S. 58-41.3 shall be in a form prescribed by the Commissioner.

(f) The Commissioner is authorized to establish "staggered" systems for licensing persons under this section, G.S. 58-40.1, and G.S. 58-41.2, that will most equally apportion the issuances and renewals of those licenses throughout each calendar year. To this end, the Commissioner is authorized to extend the licensure period for some licensees provided for in subsection (e) of this section for the purpose of establishing the staggered licensing systems. License application and renewal fees prescribed by G.S. 105-228.7 shall be prorated by the Commissioner to the extent that they are commen-

surate with the licensure periods extended by the Commissioner under this subsection.

(g) Nothing in G.S. 58-51.1 or in G.S. 58-39.4(p) permits a person to simultaneously hold an agent's license and an adjuster's license. (1899, c. 54, s. 81; 1901, c. 391, s. 7; 1903, c. 438, s. 8; c. 774; Rev., s. 4706; 1915, c. 109, s. 7; c. 166, s. 1; C.S., s. 6298; 1951, c. 105, s. 1; 1953, c. 1043, s. 2; 1971, c. 757, s. 3; 1983, c. 662; 1985, c. 484, ss. 6, 7; 1985 (Reg. Sess., 1986), c. 1013, s. 12.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1983 amendment, effective Jan. 1, 1984, added the language beginning "Provided, however, any life insurance agent duly licensed" at the end of the first sentence and added the last two sentences of subsection (a).

The 1985 amendment, effective July 1, 1985, deleted "annually" following "shall be required to obtain" in subsections (a), (b), and (c) and added subsections (e) and (f).

The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, added subsection (g).

§ 58-40.01: Repealed by Session Laws 1985, c. 484, s. 1, effective July 1, 1985.

§ 58-40.1. (Repealed effective February 1, 1988) Insurance brokers must procure license.

Every insurance broker shall be required to obtain from the Commissioner a license under the seal of his office, showing that he is authorized to procure insurance through duly authorized agents of insurers for which he is not authorized to act as agent. Such license shall be issued to cover only those kinds of insurance authorized by his agent's license. Every such broker shall, on demand, exhibit his license to any representative of the Insurance Department or to any person from whom he shall solicit insurance. (1947, c. 922; 1985, c. 484, s. 6.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted "annually" following "shall be required to obtain" in the first sentence.

§ 58-40.2: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-40 has a delayed repeal date. See notes for date.

§§ 58-40.1, 58-40.2 have delayed repeal dates. See notes for date.

§ 58-40.3. (Repealed effective February 1, 1988) Broker's authority and commissions.

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

For this section as in effect until February 1, 1988, see the main volume.

CASE NOTES

Broker as Agent of Insurer. — Where a broker "solicits" within the meaning of § 58-197, he is deemed an agent of the insurer in situations covered by that statute. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 311 N.C. 62, 316 S.E.2d 256 (1984).

§ 58-40.4: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-40.5. (Repealed effective February 1, 1988) Exceptions to requirements for licensing.

Nothing contained in this Chapter shall be construed as prohibiting the purchase of insurance by, or requiring the licensing of, a person who arranges the purchase of insurance to cover property in which he or his employer has an insurable interest, provided such insurance is issued through an agent duly licensed under this Article or purchased according to G.S. 58-54.21 or Article 36 of this Chapter. (1953, c. 1043, s. 4; 1987, c. 727, s. 7; c. 864, s. 45.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — Session Laws 1987, c. 727, s. 7, effective August 5, 1987, added "or purchased according to G.S. 58-54.21 or Article 36 of this Chapter" at the end of the section.

Session Laws 1987, c. 864, s. 45, effective August 14, 1987, substituted "this Chapter" for "Article 3 of Chapter 58" near the beginning of this section.

§ 58-40.6: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-41. (Repealed effective February 1, 1988) Agent's and adjuster's qualifications.

Before a license is issued to an insurance agent, general agent, or insurance adjuster in this State, the agent, general agent, or adjuster shall apply for license on forms to be prescribed by the Commissioner. In all cases where application is made for the license mentioned herein by an insurance agent or general agent, the company for which the agent or general agent desires to act shall also apply for the license on forms to be prescribed by the Commissioner. Upon the filing of an application of an insurance adjuster there shall also be an application, as above prescribed, by the insurance company for which that adjuster proposes to adjust in the event that the adjuster is to be an employee of that company. Upon the filing of an application of an adjuster who is to work as an employee of any person, firm, or corporation other than an insurance company, then the employer shall make an application on form prescribed by the Commissioner. Before he issues a license to such agent, general agent, or insurance adjuster, the Commissioner shall satisfy himself that such license, if issued, shall serve the public interest and that the person applying for the license as an agent, general agent, or insurance adjuster:

(1) Be 18 years of age or over;

(2) Meet residence requirements as follows:

a. For insurance adjusters: be a bona fide resident of and actually reside in this State except as provided in G.S. 58-51.2.

b. For agents and general agents: be a bona fide resident of and actually reside within this State on the date he applies for a license, except as provided in G.S. 58-43 and G.S. 58-43.1. The provisions of this paragraph shall also apply to agents operating under General Statutes Chapters 57 and 57B.

(3) Successfully pass an examination as required under G.S. 58-41.1;

(4) Be a trustworthy person;

(5) Has not willfully violated any of the insurance laws of this State;

(6) Has had special education, training, or experience of sufficient duration and extent necessary to satisfy the Commissioner that the applicant possesses the competence necessary to fulfill the responsibilities of an agent, general agent, or adjuster. All applicants for licensing as fire and casualty or life insurance agents shall furnish evidence satisfactory to the Commissioner of successful completion of at least 30 hours of instruction, which shall in all cases include the general principles of insurance and any other topics that the Commissioner establishes by regulation; and which shall, in the case of fire and casualty insurance applicants, include instruction in fire and casualty insurance and, in the case of life insurance applicants, shall include the principles of life insurance. Any applicant who submits satisfactory evidence of having successfully completed an agent training course that has been approved by the Commissioner and that is offered by or under the auspices of a fire and casualty or life insurance company ad-

§ 58-41 has a delayed repeal date. See notes for date.

mitted to do business in this State, shall be deemed to have satisfied the educational requirements of this subdivision. Upon the expiration of any license of an agent, general agent, or insurance adjuster, the Commissioner may grant a license to that agent, general agent, or insurance adjuster for a period not exceeding one year, upon an application of the company desiring to license that agent or general agent, or upon the application of the employer of that insurance adjuster, and without any application from the agent, general agent, or insurance adjuster, on forms and in accordance with rules determined by the Commissioner and upon payment of the proper fees by either the insurance company or the agent, general agent, or insurance adjuster. The requirement in this subdivision for completion of 30 hours of instruction does not apply to applicants for agents' licenses who are not required by law to take and pass written examinations for the issuance of the licenses; to applicants for title insurance agent licenses; not to applicants for physical damage insurance agent licenses who, when licensed, will not sell any other fire and casualty insurance than physical damage insurance on motor vehicles.

No license may be issued to any agent whose premium writings represented by the premiums on contracts of insurance signed, countersigned, issued or sold by him or the agency employing him for the general public during the preceding year shall not exceed those on insurance signed, countersigned, issued or sold by the agency covering his own property or life and the property or lives of members of his immediate family, his employer, his employees, and stockholders or employees of his employer. This limitation shall not apply to agents originally licensed and duly qualified prior to April 1, 1945. (1913, c. 79, s. 1; 1915, c. 109, ss. 6, 7; c. 166, s. 7; C.S., s. 6299; 1931, c. 185; 1945, c. 458; 1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1953, c. 1043, s. 5; 1955, c. 850, ss. 1, 4; 1957, c. 96; 1961, c. 1149; 1971, c. 1231, s. 1; 1985, c. 484, ss. 2, 3; c. 733, s. 1.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — Session Laws 1985, c. 484, ss. 2, 3, effective July 1, 1985, rewrote paragraph (2)b and deleted a final paragraph relating to a bond requirement.

Session Laws 1985, c. 733, s. 1, effective July 1, 1986, rewrote subdivision (6).

§ 58-41.1. (Repealed effective February 1, 1988) Examinations for license.

(a) Each applicant for license as agent, general agent or adjuster shall, prior to the issuance of any such license, personally take and pass to the satisfaction of the Commissioner an examination in writing given by the Commissioner as a test of his qualifications and competence; but this requirement shall not apply to:

(1) Applicants for license under G.S. 58-41.2 and as agents for companies or associations specified in G.S. 58-124.28;

(2) Applicants who have, within the three-year period next preceding the date of application, not including time spent in military service of the United States during war, been

§ 58-41 has a delayed repeal date. See notes for date.

§ 58-41.1 has a delayed repeal date. See notes for date.

licensed in this State in the same capacity and to engage in the same kinds of insurance for which they were previously licensed;

(3) Applicants for an agent's, general agent's or adjuster's license covering the same kinds of insurance as authorized by the license then held by them except as provided in subsection (b) of this section;

(4) Applicants for license to write ocean marine insurance whenever the Commissioner deems the applicant to be qualified by past experience to deal in such insurance;

(5) Applicants (who are bona fide residents and actually residing in this State) for an agent's, general agent's, or adjuster's license covering the same kinds of insurance as authorized by the license or certificate granted him upon the successful passing of a written examination given by the insurance department of another state, or by the American College of Life Underwriters, Life Underwriters Training Council, American Institute of Property and Liability Underwriters, Insurance Institute of America;

(6) Applicants for license as credit life insurance agents, credit accident and health insurance agents and credit insurance agents as defined in subdivision (17) of G.S. 58-72.

(b) The Commissioner may require any licensed agent, general agent or adjuster to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been guilty of any violation of any provision of this Chapter. If a person fails to pass such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such person has successfully passed an examination as provided in this Chapter.

(c) Each examination shall be as the Commissioner prescribes, shall be of sufficient scope to test the applicants' knowledge of:

(1) The terms and provisions of the policies or contracts of insurance he proposes to effect; or

(2) The types of claims or losses he proposes to adjust; and

(3) The duties and responsibilities of such a license; and

(4) The current laws of this State applicable to such a license.

(d) The answers of the applicant to any such examination shall be written by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as he deems necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner is authorized to contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner is authorized to charge a reasonable fee not to exceed thirty-five dollars ($35.00), in addition to the registration fee charged under G.S. 105-228.7, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of General Statutes Chapter 143. The Commissioner shall require a waiting period of at least 30 days' duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(e) The Commissioner shall collect in advance the examination fee provided in G.S. 105-228.7 and in subsection (d) of this section.

§ 58-41.1 has a delayed repeal date. See notes for date.

The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he deems necessary for the applicants' proper preparation for such exams. The Commissioner is hereby empowered to contract directly with publishers and other suppliers for the production of such preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3, Chapter 143 of the General Statutes.

(f) Upon the filing of the application for the license as insurance adjuster and the advance payment of the examination fee referred to above and upon the filing with the Commissioner of a certificate signed by the employer of the applicant certifying that the applicant is a person of good character and is employed by the signer of a certificate and will operate as a student or learner under the instruction and general supervision of a licensed insurance adjuster, and that the employer will be responsible for the adjustment acts of the learner during the learning period, the Commissioner may issue to the applicant a learner's permit authorizing the applicant to act as an insurance adjuster for a learning period of 90 days without a requirement of any other or additional license; provided that not more than one learner permit shall ever be issued to one individual. (1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1953, c. 1043, s. 6; 1969, c. 1206; 1971, c. 926, s. 2; 1979, 2nd Sess., c. 1320, ss. 1, 2; 1983, c. 802, s. 4; 1985, c. 484, s. 5; c. 733, s. 2; 1985 (Reg. Sess., 1986), c. 928, ss. 2, 3.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, substituted "G.S. 58-124.28" for "G.S. 58-131.9" in subdivision (1) of subsection (a).

Session Laws 1985, c. 484, s. 5, effective July 1, 1985, added the proviso at the end of the second sentence of subdivision (d).

Session Laws 1985, c. 733, s. 2, effective July 1, 1986, substituted "Insurance Institute of America" for "Institute of Insurance of America, or any insurance institute conducted at a recognized college or university in the State of North Carolina and meeting the standards as approved by the Commissioner of Insurance" at the end of subdivision (a)(5).

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, inserted "the Commissioner is authorized to charge a reasonable fee not to exceed thirty-five dollars ($35.00), in addition to the registration fee charged under G.S. 105-228.7, to offset the cost of the examination contract authorized by this subsection" in the proviso in the second sentence of subsection (d) and inserted "and in subsection (d) of this section" at the end of the first sentence of subsection (e).

§ 58-41.2. (Repealed effective February 1, 1988) Limited licenses.

(a) The Commissioner shall issue limited licenses to persons requesting to be licensed:

(1) As agents for any type of insurance to persons who continue to represent an insurance company solely for the purpose of servicing unexpired contracts of insurance.

(2) As travel insurance agents to employees of common carriers of persons or to individuals or employees of persons engaged in selling transportation on such common carriers.

§ 58-41.1 has a delayed repeal date. See notes for date.

§ 58-41.2 has a delayed repeal date. See notes for date.

(3) As Motor Club Membership Sales Agents to persons or firms engaged in the sales of Memberships for Motor Clubs licensed under Article 9B of Chapter 66 of the General Statutes.

(c) Motor Club Membership Sales Agents shall be restricted to the sale of only such insurance as may be included in the Motor Club Membership unless they are also otherwise licensed as insurance agents under this Chapter. (1947, c. 922; 1953, c. 1043, s. 7; 1983, c. 802, ss. 1, 2.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, added subdivision (3) of subsection (a) and added subsection (c).

§ 58-41.2A. (Repealed effective February 1, 1988) Agent for United States military personnel in foreign countries.

Notwithstanding any other provision of this Article, a natural person not a resident of this State may be licensed by the Commissioner as a foreign military sales agent to represent a life insurance company domiciled in this State, provided the agent represents the insurance company only in a foreign country or territory and either on a United States military installation or with United States military personnel. The Commissioner may, upon request of the insurance company on application forms furnished by the Commissioner and upon payment of the fee specified in G.S. 105-228.7, issue to the applicant a restricted license which will be valid only for the representation of the insurance company in a foreign country or territory and either on a United States military installation or with United States military personnel. The insurance company shall certify to the Commissioner that the applicant has the necessary training to hold himself out as a life insurance agent, and that the insurance company is willing to be bound by the acts of the applicant within the scope of his employment. A restricted license issued under this section shall be renewed annually as provided in G.S. 58-40. (1985, c. 712, s. 1.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Editor's Note. — Session Laws 1985, c. 712, s. 2 makes this section effective Oct. 1, 1985.

§§ 58-41.3, 58-41.4: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For these sections as in effect until February 1, 1988, see the main volume.

§ 58-41.5. (Repealed effective February 1, 1988) Licensing of persons other than individuals as insurance agents.

(a) A person other than an individual may be licensed as a life or fire and casualty insurance agent as defined in G.S. 58-39.4(e) or (i). In such event, each individual who is to act for the person shall be named in the application for license and shall qualify as an individual licensee.

(1981, c. 845; 1985, c. 666, s. 83.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, deleted "life" preceding "insurance" in the catchline and in subsection (a) substituted "life or fire and casualty insurance agent as defined in G.S. 58-39.4(e) or (i)" for "life insurance agent as defined in G.S. 58-39.4(e)" at the end of the first sentence.

§ 58-42: Repealed by Session Laws 1987, c. 864, s. 72, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-42.1. (Effective until February 1, 1988) Twisting with respect to insurance policies; penalties.

No insurer, or the agent or broker of any insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of G.S. 58-9.7, 58-37 through 58-39, 58-42, and 58-44.4. (1961, c. 823; 1987, c. 864, s. 3(a); c. 787, s. 2.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For the section as amended effective February 1, 1988, see the following section, also numbered § 58-42.1.

Effect of Amendments. — Session Laws 1987, c. 864, s. 3(a), effective August 14, 1987, substituted a reference to § 58-9.7 for a reference to § 58-44.6 in the section as it read prior to amendment by Session Laws 1987, c. 787, s. 2.

Session Laws 1987, c. 787, s. 2, effective November 1, 1987, rewrote this section.

§§ 58-41.5, 58-42 have delayed repeal dates. See notes for date.
§ 58-42.1 is set out twice. See headings for effective dates.

§ 58-42.1. (Effective February 1, 1988) Twisting with respect to insurance policies; penalties.

No insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or atempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of G.S. 58-9.7, 58-37 through 58-39, 58-42, and 58-44.4. (1961, c. 823; 1987, c. 629, s. 4; c. 787, s. 2; c. 864, ss. 3(a), 74.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-42.1.

Effect of Amendments. — Session Laws 1987, c. 864, s. 3(a), effective August 14, 1987, substituted a reference to § 58-9.7 for a reference to § 58-44.6 in the section as it read prior to amendment by Session Laws 1987, c. 787, s. 2.

Session Laws 1987, c. 787, s. 2, effective November 1, 1987, rewrote this section.

Session Laws 1987, c. 629, s. 4, effective February 1, 1988, deleted "or any agent of any insurer" following "Any insurer" at the beginning of this section as it read prior to amendment by Session Laws 1987, c. 787, s. 2.

Session Laws 1987, c. 864, s. 74, effective February 1, 1988, deleted "or the agent or broker of any insurer" following "No insurer," at the beginning of the section.

§ 58-43. (Repealed effective February 1, 1988) Nonresident agents forbidden; exception.

No nonresident of the State shall be licensed as an agent to do business in the State except as a special agent or organizer, and except as an agent licensed to sell life insurance, annuities, accident, health, or accident and health insurance only, and then only when he reports his business as North Carolina business to some general or district agent of his company in the State, or having territory within the State. No such nonresident shall be licensed to represent a life insurance company in this State unless he is licensed in his home state and meets the licensing requirements of this Chapter; Provided, that the provisions of this sentence apply to the extent that the laws or regulations of the nonresident's home state make similar provisions for residents of North Carolina. (1899, c. 54, s. 108; 1903, c. 438, s. 11; Rev., s. 4707; C.S., s. 6301; 1945, c. 458; 1947, c. 922; 1955, c. 850, s. 2; 1983, c. 689, ss. 1, 2; 1985, c. 484, s. 4.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1983 amendment, effective July 6, 1983, deleted "to represent the same company" following "unless he is licensed" in the second sentence and added the proviso at the end of that sentence.

The 1985 amendment, effective July 1, 1985, substituted "life insurance, annuities, accident, health, or accident and health insurance" for "life insurance and annuities" in the first sentence.

§ 58-42.1 is set out twice. See headings for effective dates.
§ 58-43 has a delayed repeal date. See notes for date.

§ 58-43.1: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-44. (Repealed effective February 1, 1988) Resident agents required.

All business done in this State by insurance companies doing the business of insurance as defined in G.S. 58-72(4) through G.S. 58-72(22), shall be transacted by their regularly authorized agents residing in this State, or through applications of such agents; and all policies issued by insurance companies doing the business of insurance as defined in G.S. 58-72(4) through G.S. 58-72(22) must be countersigned by such agents; provided, however, that this section shall not apply to bid bonds issued by any such company in connection with any public or private building or construction project. It shall be unlawful for any salaried officer, manager or other representative of any such company to transact for his company any of the business of a licensed agent unless he himself shall be a bona fide resident licensed agent. (1899, c. 54, ss. 107, 108; 1903, c. 438, s. 11; Rev., s. 4810; 1911, c. 196, s. 5; 1913, c. 140, s. 3; C.S., s. 6302; 1921, c. 136, s. 3; 1925, c. 70, s. 1; 1945, c. 458; 1957, c. 548; 1959, c. 1013; 1985, c. 484, s. 4.1.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, substituted "G.S. 58-72(4) through G.S. 58-72(22)" for "G.S. 58-72" preceding "shall be transacted" and for "subdivisions (3) through (22), inclusive, of G.S. 58-72" preceding "must be countersigned" in the first sentence.

§§ 58-44.1, 58-44.2: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For these sections as in effect until February 1, 1988, see the main volume.

§ 58-44.3. (Effective February 1, 1988) Discrimination forbidden.

No company doing the business of insurance as defined in G.S. 58-72 shall make any discrimination in favor of any person. (1903, c. 488, s. 2; 1905, c. 170, s. 2; Rev., s. 4766; C.S., s. 6430; 1923, c. 4, s. 70; 1925, c. 70, s. 6; 1945, c. 458; 1987, c. 629, s. 5.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§§ 58-43.1 to 58-44.2 have delayed repeal dates. See notes for date.
§ 58-44.3 has a delayed effective date. See notes for date.

CASE NOTES

Purpose and Applicability. — The statutory provisions which prohibit an insurer or insurance agent from "discrimination" in setting rates for any person — §§ 58-44.3, 58-44.5, and 58-54.4 — are obviously designed to prohibit an insurance agent or company from charging reduced or excessive insurance rates contrary to the established rating rules applicable to the risk, and are not applicable to rate making. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

§ 58-44.4. (Effective February 1, 1988) Revocation of license for violation; power of Commissioner.

When the Commissioner has information of a violation by an insurance company of any of the provisions of G.S. 58-42.1, 58-44.3 or 58-614(h), he shall immediately investigate or cause to be investigated such violation, and if any such insurance company has violated any of said provisions he may immediately revoke its license for not less than three nor more than six months for a first offense, and for each offense thereafter for not less than one year. For the purpose of enforcing the provisions of said sections the Commissioner is authorized and empowered to examine persons, administer oaths, and require production of papers and records. A failure or refusal on the part of any such insurance company, licensed to do business in this State, or representative thereof, to appear before the Commissioner when requested to do so, or to produce records and papers, or answer under oath, subjects such company, or representative, to the penalties of this section. (1903, c. 488, ss. 3, 4; Rev., s. 4767; C.S., s. 6431; 1945, c. 458; 1987, c. 629, s. 6.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 58-44.4A: Repealed by Session Laws, 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-44.5. (Repealed effective February 1, 1988) Rebates and charges in excess of premium prohibited; exception.

(a) No insurer or employee thereof, and no broker or agent, shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner of Insurance. No insurer or employee thereof, and no broker or agent shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or

§ 58-44.4 has a delayed effective date. See notes for date.
§§ 58-44.4A, 58-44.5 have delayed repeal dates. See notes for date.

other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond.

(b) No insurer, broker, or agent shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with the issuance or renewal of a contract of insurance, which money or other consideration is in addition to the filed and approved premium for such contract, unless the applicant consents in writing before any services are rendered. (1943, c. 170; 1951, c. 781, s. 2; 1985 (Reg. Sess., 1986), c. 1013, ss. 13, 14; 1987, c. 864, ss. 31, 32.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 7, as rewritten by c. 864, s. 48.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, inserted "and charges in excess of premium" in the section catchline, designated the existing language as subsection (a), and added subsection (b).

Session Laws 1987, c. 864, ss. 31 and 32, effective August 14, 1987, added "exception" at the end of the catchline and rewrote subsection (b).

CASE NOTES

Purpose and Applicability. — The statutory provisions which prohibit an insurer or insurance agent from "discrimination" in setting rates for any person — §§ 58-44.3, 58-44.5, and 58-54.4 — are obviously designed to prohibit an insurance agent or company from charging reduced or excessive insurance rates contrary to the established rating rules applicable to the risk and are not applicable to rate making. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

§ 58-44.6: Repealed by Session Laws 1983, c. 416, s. 1, effective June 2, 1983.

§ 58-44.7. (Effective February 1, 1988) Rebate of premiums on credit life and credit accident and health insurance; retention of funds by agent.

It shall be unlawful for any insurance carrier, or officer, agent or representative of an insurance company writing credit life and credit accident and health insurance, as defined in G.S. 58-195.2 and G.S. 58-254.8, or combination credit life, accident and health,

§ 58-44.5 has a delayed repeal date. See notes for date.
§ 58-44.7 has a delayed effective date. See notes for date.

hospitalization and disability insurance in connection with loans, to permit any agent or representative of such company to retain any portion of funds received for the payment of losses incurred, or to be incurred, under such policies of insurance issued by such company, or to pay, allow, permit, give or offer to pay, allow, permit or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium, to any loan agency, insurance agency or broker, or to any creditor of the debtor on whose account the insurance was issued, or to any person, firm or corporation which received a commission or fee in connection with the issuance of such insurance: Provided, that this section shall not prohibit the payment of commissions to a licensed insurance agent or agency or limited representative on the sale of a policy of credit life and credit accident and health insurance, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans. (1955, c. 1341, s. 1; 1987, c. 629, s. 8.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 58-44.8. (Repealed effective February 1, 1988) Agents prohibited from representing unauthorized companies.

No licensed agent of any insurer shall solicit anywhere in the boundaries of the State of North Carolina, or receive or transmit an application or premium of insurance, for a company not authorized to do business in the State, except as provided in G.S. 58-54.21 or in Article 36 of this Chapter. (1957, c. 547; 1985 (Reg. Sess., 1986), c. 1027, s. 44; 1987, c. 727, s. 8.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, substituted "Article 36 of this Chapter" for "G.S. 58-53.1."

The 1987 amendment, effective August 5, 1987, inserted a reference to G.S. 58-54.21.

§ 58-45: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-44.7 has a delayed effective date. See notes for date.
§§ 58-44.8, 58-45 have delayed repeal dates. See notes for date.

§ 58-46. (Repealed effective February 1, 1988) Payment of premium to agent valid; obtaining by fraud a crime.

Any agent or broker who acts for a person other than himself negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent, whatever conditions or stipulations may be contained in the policy or contract. Such agent or broker knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or by imprisonment for not more than one year, or both, in the discretion of the court. (1899, c. 54, s. 69; Rev., ss. 3486, 4814; C.S., s. 6304; 1947, c. 922; 1985, c. 666, s. 15.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted the language beginning "shall be guilty of a misdemeanor" for "shall be punished by a fine of not less than one hundred ($100.00) nor more than five hundred dollars ($500.00), or be imprisoned for not more than one year" at the end of this section.

CASE NOTES

Quoted in Hornby v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 77 N.C. App. 475, 335 S.E.2d 335 (1985).

§ 58-47. (Repealed effective February 1, 1988) Representing unlicensed company prohibited; penalty.

If any person shall unlawfully solicit, negotiate for, collect or transmit a premium for a contract of insurance or act in any way in the negotiation or transaction of any unlawful insurance with an insurance company not licensed to do an insurance business in North Carolina, he shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court. (1899, c. 54, s. 94; Rev., s. 3484; 1907, c. 1000, s. 8; C.S., s. 6305; 1945, c. 458; 1985, c. 666, s. 16.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "two hundred dollars ($200.00)" and "two thousand dollars ($2,000)" for "five hundred dollars ($500.00)".

§ 58-46 has a delayed repeal date. See notes for date.
§ 58-47 has a delayed repeal date. See notes for date.

§ 58-48: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-49. (Repealed effective February 1, 1988) False statements in applications for insurance.

If any agent, examining physician, applicant, or other person shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for insurance, or shall make any such statement for the purpose of obtaining any fee, commission, money or benefit from any company engaged in the business of insurance in this State, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or by imprisonment for not less than 30 days nor more than one year, or both, in the discretion of the court. This section shall also apply to contracts and certificates issued under General Statutes Chapters 57 and 57B. (1899, c. 54, s. 60; Rev., s. 3487; C.S., s. 6307; 1945, c. 458; 1947, c. 922; 1965, c. 911; 1985, c. 666, s. 17.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)" near the end of the first sentence, substituted "or by imprisonment for not less than 30 days nor more than one year, or both, in" for "or imprisonment in the county jail for not less than 30 days nor more than one year, or by both fine and imprisonment, at" near the end of the first sentence, and rewrote the second sentence, which read: "The provisions of this section shall be applicable to contracts and certificates issued pursuant to Chapters 57 and 58 of the General Statutes.

§ 58-50. (Repealed effective February 1, 1988) Agents signing certain blank policies.

Any agent who signs any blank contract or policy of insurance is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000); provided, however, that transportation ticket policies of accident insurance and baggage insurance policies may be countersigned in blank for issuance only through coin-operated machines, subject to regulations prescribed by the Commissioner. (1899, c. 54, ss. 108, 109; Rev., s. 3488; 1911, c. 196, s. 6; C.S., s. 6308; 1945, c. 458; 1947, c. 922; 1985, c. 666, s. 18.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted the language beginning "Any agent who signs" and ending "five thousand dollars ($5,000)" for "No agent shall sign any blank contract or policy of

§§ 58-48 to 58-50 have delayed repeal dates. See notes for date.

insurance, and any agent guilty of violating this section shall, upon conviction, be fined for each offense not less than one hundred dollars ($100.00) nor more than two hundred dollars ($200.00)" at the beginning of this section.

§ 58-51. (Repealed effective February 1, 1988) Adjuster acting for unauthorized company.

If any person shall act as adjuster on a contract made otherwise than as authorized by the laws of this State, or by any insurance company or other person not regularly licensed to do business in this State, or shall adjust or aid in the adjustment, either directly or indirectly, of a claim arising under a contract of insurance not authorized by the laws of the State, he shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisoned not less than six months nor more than two years, or both, in the discretion of the court. (1899, c. 54, s. 114; Rev., s. 3482; C.S., s. 6309; 1945, c. 458; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1985, c. 666, s. 19.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "two hundred dollars ($200.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)."

§§ 58-51.1, 58-51.2: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For these sections as in effect until February 1, 1988, see the main volume.

§ 58-51.3. (Repealed effective February 1, 1988) Companies and agents to transact business through licensed agents.

No insurance company, nor any agent of any insurance company, shall on behalf of such company or agent knowingly permit any person not licensed as an insurance agent as provided by law, to solicit insurance, negotiate for, collect or transmit a premium for a new contract of insurance or to act in any way in the negotiation for any contract or policy of insurance; provided, no license shall be required of the following:

(4) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-72(1) through G.S. 58-72(3) that do business without the involvement of a licensed agent. (1949, c. 1120; 1953, c. 1043, s. 10; 1985 (Reg. Sess., 1986), c. 800.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Sessions Laws 1987, c. 629, s. 20.

§§ 58-51 to 58-51.3 have delayed repeal dates. See notes for date.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 26, 1986, added subdivision (4).

§ 58-51.4: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-51.5. Certain insurance activities by lenders with customers prohibited.

No lender shall require the purchase of insurance from such lender or subsidiary or affiliate of such lender as a condition to the making, renewing or refinancing of any loan or to the establishing of any of the terms or conditions of such loan. Lenders shall not include organizations of the Farm Credit System. (1985, c. 679, s. 1.)

Editor's Note. — Session Laws 1985, c. 679, s. 2 makes this section effective Oct. 1, 1985.

§ 58-52. (Effective until February 1, 1988) Agent, adjuster, etc., acting without a license or violating insurance law.

If any person shall assume to act either as principal, agent, broker, adjuster or motor vehicle damage appraiser without license as is required by law or pretending to be a principal, agent, broker, adjuster or licensed motor vehicle damage appraiser, shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, investigate or advise relative to the nature and amount of damages to motor vehicles or the amount necessary to effect repairs thereto, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal or agent shall violate any provision of law contained in this Chapter, the punishment for which is not elsewhere provided for, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court. (1899, c. 54, s. 115; Rev., s. 3490; C.S., s. 6310; 1945, c. 458; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1971, c. 757, s. 7; 1985, c. 666, s. 20.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 58-52.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)".

§ 58-51.4 has a delayed repeal date. See notes for date.
§ 58-52 is set out twice. See headings for effective dates.

§ 58-52. (Effective February 1, 1988) Agent, adjuster, etc., acting without a license or violating insurance law.

If any person shall assume to act either as principal, agent, broker, limited representative, adjuster or motor vehicle damage appraiser without license as is required by law or, pretending to be a principal, agent, broker, limited representative, adjuster or licensed motor vehicle damage appraiser, shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, investigate or advise relative to the nature and amount of damages to motor vehicles or the amount necessary to effect repairs thereto, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal or agent shall violate any provision of law contained in this Chapter, the punishment for which is not elsewhere provided for, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court. (1899, c. 54, s. 115; Rev., s. 3490; C.S., s. 6310; 1945, c. 458; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1971, c. 757, s. 7; 1985, c. 666, s. 20; 1987, c. 629, s. 9.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-52.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 58-52.1. (Repealed effective February 1, 1988) Process against nonresident licensees.

(c) Duplicate copies of such legal process against such agent, adjuster, motor vehicle damage appraiser, or broker shall be served upon the Commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the Commissioner a fee of five dollars ($5.00), taxable as costs in the action to defray the expense of such service.

(d) Upon receiving such service, the Commissioner or his duly appointed deputy shall within three business days send one of the copies of the process, by registered or certified mail, to the defendant agent, adjuster, motor vehicle damage appraiser, or broker at his last address of record as filed with the Commissioner.

(1947, c. 922; 1971, c. 757, s. 8; 1985, c. 666, ss. 5, 6.)

Section Repealed Effective February 1, 1988. — This section is repealed effective February 1, 1988, by Session Laws 1987, c. 629, s. 20.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "five dollars ($5.00)" for "one dollar ($1.00)" near the end of subsection (c) and rewrote subsection (d).

§ 58-52 is set out twice. See headings for effective dates.
§ 58-52.1 has a delayed repeal date. See notes for date.

§ 58-53: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§§ 58-53.1 to 58-53.3: Repealed by Session Laws 1985, c. 688, s. 3, effective July 11, 1985.

Cross References. — For the Surplus Lines Act, see now § 58-420 et seq.

§ 58-54. Forms to be approved by Commissioner of Insurance.

It is unlawful for any insurance company doing business in this State to issue, sell, or dispose of any policy, contract, or certificate, or use applications in connection therewith, until the forms of the same have been submitted to and approved by the Commissioner of Insurance of North Carolina, and copies filed in the Insurance Department. If a policy form filing is disapproved by the Commissioner, the Commissioner may return the filing to the filer. As used in this section, "policy form" includes endorsements, riders, or amendments to policies that have already been approved by the Commissioner. (1907, c. 879; 1913, c. 139; C.S., s. 6312; 1945, c. 377; 1987, c. 752, s. 7.)

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, added the last two sentences.

Article 3A.

Unfair Trade Practices.

§ 58-54.1. Declaration of purpose.

CASE NOTES

Applied in Sharpe v. Nationwide Mut. Fire Ins. Co., 62 N.C. App. 564, 302 S.E.2d 893 (1983).

Cited in Pearce v. American Defender Life Ins. Co., 74 N.C. App. 620, 330 S.E.2d 9 (1985); Winston Realty Co. v. G.H.G., Inc., 314 N.C. 90, 331 S.E.2d 677 (1985).

§ 58-54.2. (Effective February 1, 1988) Definitions.

When used in this Article:

(1) "Commissioner" shall mean the Commissioner of Insurance of this State.

(2) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including

§ 58-53 has a delayed repeal date. See notes for date.

§ 58-54.2 has a delayed effective date. See notes for date.

agents, brokers, limited representatives, and adjusters. (1949, c. 1112; 1987, c. 629, s. 10.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, inserted a reference to limited representatives near the end of subdivision (2).

§ 58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(7) Unfair Discrimination.

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

c. Making or permitting any unfair discrimination between or among individuals or risks of the same class and of essentially the same hazard by refusing to issue, refusing to renew, cancelling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

1. The refusal or limitation is for the purpose of preserving the solvency of the insurer and is not a mere pretext for unfair discrimination, or
2. The refusal, cancellation, or limitation is required by law.

d. Making or permitting any unfair discrimination between or among individuals or risks of the same class and of essentially the same hazard by refusing to issue, refusing to renew, cancelling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

1. The refusal or limitation is for the purpose of preserving the solvency of the insurer and is not a mere pretext for unfair discrimination, or
2. The refusal, cancellation, or limitation is required by law.

(9) Advertising of Health, Accident or Hospitalization Insurance. — In all advertising of policies, certificates or service plans of health, accident or hospitalization insurance, ex-

§ 58-54.2 has a delayed effective date. See notes for date.

cept those providing group coverage, where details of benefits provided by a particular policy, certificate or plan are set forth in any advertising material, such advertising material shall contain reference to the major exceptions or major clauses limiting or voiding liability contained in the policy, certificate or plan so advertised. The references to such exceptions or clauses shall be printed in a type no smaller than that used to set forth the benefits of the policy, certificate or plan. In all advertising of such policies, certificates or plans which contain a cancellation provision or a provision that the policies, certificates or plans may be renewed at the option of the company or medical service corporation only, such advertising material shall contain clear and definite reference to the fact that the policies, certificates or plans are cancellable or that the same may be renewed at the option of the company only.

In advertising, sale, or solicitation for sale of any insurance policy represented or advertised to afford coverages and benefits supplemental to or in addition to Medicare coverage, all such advertising materials, except for advertisements which have as their objective the creation of a desire to inquire further about an insurance product and do nothing more than generally describe the product and invite inquiries for costs and further details of the coverage, including limitations, exclusions, reductions or limitations and terms under which the policy may be continued in force, in whatever medium, and all solicitation and presentations for the sale of such policies, shall contain specific references to major exclusions or major exceptions that may result in voiding liability or in a reduction of benefits below those primarily advertised. When such policies contain a coordination of benefits clause whereby benefits are limited by or prorated with other outstanding coverages, such provision shall be called to the attention of the prospective purchaser by conspicuously printed type no smaller than 10 point type. When such policies are advertised to provide coverage above Medicare payments, but contain provisions limiting benefits to those approved for payment by Medicare under Part B, such limitation in benefits shall be called to the attention of the prospective purchaser regardless of the advertising medium; and when policies containing such provisions are delivered, there shall be incorporated therein the language or affixed thereto a sticker in conspicuously printed type no smaller than 10 point type stating: CAUTION: POLICY BENEFITS ARE LIMITED TO THOSE APPROVED BY MEDICARE FOR PAYMENT. Any person engaged in the solicitation or sale of such supplemental Medicare policies in this State shall, as a part of the application, determine and list on the application all policies of Medicare supplement or other health insurance currently in force that cover the prospective insured. In compiling such information, the person is entitled to rely upon information furnished by the prospective purchaser or insured.

(11) Unfair Claim Settlement Practices. — Committing or performing with such frequency as to indicate a general busi-

ness practice of any of the following: Provided, however, that no violation of this subsection shall of itself create any cause of action in favor of any person other than the Commissioner:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
e. Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed;
f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
g. Compelling [the] insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insured;
h. Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled;
i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;
j. Making claims payments to insureds or beneficiaries not accompanied by [a] statement setting forth the coverage under which the payments are being made;
k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
l. Delaying the investigation or payment of claims by requiring an insured claimant, or the physician, of [or] either, to submit a preliminary claim report and then requiring the subsequent submission of formal proof-of-loss forms, both of which submissions contain substantially the same information;
m. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and
n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(12) Misuse of borrowers' confidential information. Soliciting, accepting, or using any information from a lender concerning policies of insurance held by such lender as a mort-

gagee of real property, except from a lender who is an insurer where the loan has been made by or sold or held for sale to such insurer. Provided, however, this subdivision shall not apply to the use of such information by a lender for the solicitation of life or accident and health insurance.

(13) Overinsurance in Credit or Loan Transactions. — In connection with a loan or extension of credit secured by real or personal property or both, requiring the applicant to procure property and casualty insurance against any one risk which results in coverage which exceeds the replacement value of the secured property at the time of the loan or extension of credit. In connection with a secured or unsecured loan or extension of credit, requiring the applicant to procure life or health insurance against any one risk which exceeds the amount of the loan. In connection with a loan secured by both real and personal property, requiring credit property insurance, as defined in G.S. 58-359, on the personal property. For the purposes of this subsection "amount of loan" shall be deemed to be the amount of principal and accrued interest to be paid by the debtor including other allowable charges. (1949, c. 1112; 1955, c. 850, s. 3; 1967, c. 935, s. 2; 1975, c. 668; 1983, c. 831; 1985 (Reg. Sess., 1986), c. 1027, ss. 18, 20; 1987, c. 787, ss. 1, 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 19, 1983, added subdivision (12).

The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, added paragraphs (7)(c) and (7)(d), and rewrote the catchline and introductory language of subdivision (11).

The 1987 amendment, effective November 1, 1987, added the last paragraph of subdivision (9) and added subdivision (13).

Legal Periodicals. —

For note, "Bad Faith Refusal to Pay First-Party Insurance Claims: A Growing Recognition of Extra-Contract Damages," see 64 N.C.L. Rev. 1421 (1986).

For article, "North Carolina's Cautious Approach Toward the Imposition of Extracontract Liability on Insurers for Bad Faith," see 21 Wake Forest L. Rev. 957 (1986).

CASE NOTES

Purpose and Applicability. — The statutory provisions which prohibit an insurer or insurance agent from "discrimination" in setting rates for any person — §§ 58-44.3, 58-44.5, and 58-54.4 — are obviously designed to prohibit an insurance agent or company from charging reduced or excessive insurance rates contrary to the established rating rules applicable to the risk and are not applicable to rate making. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

A violation of this section as a matter of law constitutes an unfair or deceptive trade practice in violation of § 75-1.1. Pearce v. American Defender Life Ins. Co., 316 N.C. 461, 343 S.E.2d 174 (1986).

Arbitrary Requirement of Unnecessary Medical Reports. — Arbitrarily requiring, under a mortgage payment disability policy, costly, difficult to obtain medical reports that are clearly unnecessary and serve no legitimate purpose, as when the insurer already has proof from a doctor, or the circumstances clearly indicate that the insured's disability is not episodic but will extend beyond the current period bene-

fits are applied for, is an unfair trade practice. Douglas v. Pennamco, Inc., 75 N.C. App. 644, 331 S.E.2d 298, cert. denied, 314 N.C. 664, 336 S.E.2d 399 (1985).

Monthly Proof of Disability. — The requirement, under a mortgage payment disability policy, that the insured, whose injury was of uncertain duration and subject to improvement, submit proof of his disability each month benefits were applied for, did not constitute an unfair and deceptive trade practice. Douglas v. Pennamco, Inc., 75 N.C. App. 644, 331 S.E.2d 298, cert. denied, 314 N.C. 664, 336 S.E.2d 399 (1985).

The average consumer would not have understood the below-quoted statement, included in a letter written by an employee of an insurer in response to an inquiry by an agent of the insured as to the extent of the insured's coverage while he was in military service, to mean that the remaining exceptions to coverage, including an "air craft except," set out in the "accidental death rider" would no longer be applied: "However, in addition to the basic policy, this accidental death rider would also be payable should his death occur while in the Armed Forces but not as a result of an act of war." Pearce v. American Defender Life Ins. Co., 74 N.C. App. 620, 330 S.E.2d 9, aff'd in part and rev'd in part, 316 N.C. 461, 343 S.E.2d 174 (1986).

Failure to allege more than a single refusal by insurance company to settle a claim is fatal to a cause of action under subdivision (11) of this section. Marshburn v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

Evidence held insufficient to show a violation of subsections (2) or (4) of this section. Dull v. Mutual of Omaha Ins. Co., — N.C. App. —, 354 S.E.2d 752 (1987).

Dismissal of Claim Upheld. — Where plaintiff failed to allege any facts supporting a violation of subdivision (11) of this section, and failed to plead that alleged violations occurred "with such frequency as to indicate a general business practice," the court did not err in dismissing a claim under this section. Beasley v. National Sav. Life Ins. Co., 75 N.C. App. 104, 330 S.E.2d 207, cert. granted, 314 N.C. 537, 335 S.E.2d 13 (1985), cert. improvidently allowed, 316 N.C. 372, 341 S.E.2d 338 (1986).

Cited in Hooper v. Liberty Mut. Ins. Co., — N.C. App. —, 353 S.E.2d 248 (1987).

§ 58-54.11. Penalty.

Any person who willfully violates a cease and desist order of the Commissioner under G.S. 58-54.7, after it has become final, and while such order is in effect, shall forfeit and pay to the Commissioner for the use of the public schools of the county or counties in which the act or acts complained of occurred the sum of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each violation, which if not paid shall be recovered pursuant to G.S. 58-9.7 in a civil action instituted in the name of the Commissioner in a court of competent jurisdiction in Wake County. (1949, c. 1112; 1985, c. 666, s. 21.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "the sum of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each violation" for "a sum to be determined by the Commissioner not to exceed one thousand dollars ($1,000) for each violation" and substituted "shall be recovered pursuant to G.S. 58-9.7" for "may be recovered."

Article 3C.

Unauthorized Insurers.

§ 58-54.20. Purpose of Article.

It is the purpose of this Article to abate and prevent the practices of unauthorized insurers within the State of North Carolina, and to provide methods for effectively enforcing the laws of this State against such practices. The General Assembly finds that there is within this State a substantial amount of insurance business being transacted by insurers who have not complied with the laws of this State and have not been authorized by the Commissioner of Insurance to do business. These practices by unauthorized insurers are deemed to be harmful and contrary to public welfare of the citizens of this State. The difficulties which arise from the acts and practices of unauthorized insurers are compounded by the fact that such companies may be licensed in foreign jurisdictions and conduct a long-range business without having personal representatives or agents in proximity to insureds. The General Assembly further declares that it is a subject of vital public interest to the State that unlicensed and unauthorized companies have been and are now engaged in soliciting by way of direct mail and other advertising media, insurance risks within this State, and that such companies enjoy the many benefits and privileges provided by the State as well as the protection afforded to citizens under exercise of the police powers of the State, without themselves being subject to the laws designed to protect the insurance consuming public. The provisions of this Article are in addition to all other statutory provisions of this Chapter relating to unauthorized insurers and do not replace, alter, modify or repeal such existing provisions. (1967, c. 909, s. 1; 1987, c. 864, s. 46.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "are compounded" for "is compounded" and "may be licensed" for "are licensed" in the fourth sentence, and substituted "this Chapter" for "Chapter 58" in the last sentence.

CASE NOTES

The purpose of §§ 58-54.20 through 58-54.23 is to protect unwary North Carolinians against the overreaching machinations and solicitations of unauthorized out-of-state insurers in selling insurance policies; certainly, their purpose is not to immunize from liability indemnitors who travel to other states and induce foreign sureties to bond fledgling North Carolina building contractors that have no credit of their own and that require bonds to stay in business. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

§ 58-54.21. Transacting business without certificate of authority prohibited; exceptions.

(a) Except as hereinafter provided, it shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-54.22, without a certificate of authority issued by the Commissioner. This section shall not apply to the following acts or transactions:

(1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 36 of this Chapter;
(2) Contracts of reinsurance;
(3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
(4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy of such insurance was lawfully issued and delivered in a state where the company was authorized to transact business;
(5) Transactions in this State involving all policies of insurance issued prior to July 1, 1967;
(6) The procuring of contracts of insurance issued to a nuclear insured;
(7) Insurance independently procured, as specified in subsection (b) of this section.

(b) Any person in this State may directly procure or directly renew insurance with an unlicensed insurer without the involvement of an agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part, in this State, other than insurance procured or renewed pursuant to subsections (a)(1) through (a)(6) of this section. Any such person shall, within 30 days after the date the insurance is procured or renewed, file a written report with the Commissioner on forms prescribed by the Commissioner. The report must contain the name and address of the insured; name and address of the insurer; the subject of insurance; a general description of the coverage; the amount of premium currently charged; and such additional information as requested by the Commissioner. The report must also contain an affidavit of the insured that states that the full amount or kind of insurance cannot be obtained from insurers that are admitted to do business in this State; and that the insured has made a diligent search among the insurers that are admitted to transact and are actually writing the particular kind and class of insurance in this State. Gross premiums charged for such insurance, less any return premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the report required by this subsection, the insured shall pay the tax to the Commissioner. The Commissioner has the powers specified in G.S. 58-438 with respect to the tax levied by this subsection. (1967,

c. 909, s. 1; 1971, c. 510, s. 3; 1985, c. 688, s. 2; 1987, c. 727, ss. 4, 5; c. 864, ss. 47, 70.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, substituted "Article 36 of this Chapter" for "G.S. 58-53.1" in subdivision (1) and in the last paragraph.

Session Laws 1987, c. 727, ss. 4, 5, effective August 5, 1987, designated the first paragraph as subsection (a), substituted present subdivisions (a)(6) and (a)(7) for a former subdivision (a)(6), which read "The procuring of contracts of insurance issued to an 'industrial insured' hereinafter defined, or to a nuclear insured," deleted a former second paragraph, defining an "industrial insured," and added subsection (b).

Session Laws 1987, c. 864, ss. 47 and 70, effective August 14, 1987, deleted "of this Article" following "G.S. 58-54.22" and "of Insurance" following "Commissioner" in the introductory paragraph of subsection (a), and rewrote subdivision (a)(4).

CASE NOTES

The purpose of §§ 58-54.20 through 58-54.23 is to protect unwary North Carolinians against the overreaching machinations and solicitations of unauthorized out-of-state insurers in selling insurance policies; certainly, their purpose is not to immunize from liability indemnitors who travel to other states and induce foreign sureties to bond fledgling North Carolina building contractors that have no credit of their own and that require bonds to stay in business. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

§ 58-54.22. Acts or transactions deemed to constitute transacting insurance business in this State.

The following acts, if performed in this State, shall be included among those deemed to constitute transacting insurance business in this State:

(1) a. Maintaining any agency or office where any acts in furtherance of an insurance business are transacted, including, but not limited to the execution of contracts of insurance with citizens of this or any other state;
b. Maintaining files or records of contracts of insurance; or
c. Receiving payments of premiums for contracts of insurance.

(2) Likewise, any of the following acts in this State, whether effected by mail or otherwise by an unauthorized insurer, is included among those deemed to constitute transacting insurance business in this State:
a. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein;
b. The soliciting of applications for contracts of insurance through the use of the United States mail or any other media, method or device;
c. The collections of premiums, membership fees, assessments or other considerations for such contracts; or
d. The transaction of any matters prior to or subsequent to the execution of such contracts in contemplation thereof or arising out of them.

Any company violating any of the provisions of this section, by doing any of the foregoing acts or transactions while not authorized

to do business within this State, shall be subject to penalty of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each offense; such penalty shall be payable to the Commissioner of Insurance, who shall in turn forward the same to the county or counties wherein the violation or violations occur, for the use of the public schools of such county or counties: Provided, that each day in which a violation occurs shall constitute a separate offense. The Attorney General of the State of North Carolina at the request of and upon information from the Commissioner of Insurance shall initiate a civil action in behalf of the Commissioner in any county of the State wherein a violation under this section occurs to recover the penalty provided. Service of process upon the unauthorized insurer shall be had as is provided in G.S. 58-54.25. (1967, c. 909, s. 1; 1985, c. 666, s. 22.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100.00)" and "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the first sentence of the second paragraph.

CASE NOTES

The purpose of §§ 58-54.20 through 58-54.23 is to protect unwary North Carolinians against the overreaching machinations and solicitations of unauthorized out-of-state insurers in selling insurance policies; certainly, their purpose is not to immunize from liability indemnitors who travel to other states and induce foreign sureties to bond fledgling North Carolina building contractors that have no credit of their own and that require bonds to stay in business. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

§ 58-54.23. Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.

CASE NOTES

The purpose of §§ 58-54.20 through 58-54.23 is to protect unwary North Carolinians against the overreaching machinations and solicitations of unauthorized out-of-state insurers in selling insurance policies; certainly, their purpose is not to immunize from liability indemnitors who travel to other states and induce foreign sureties to bond fledgling North Carolina building contractors that have no credit of their own and that require bonds to stay in business. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

The phrase "action at law or in equity" cannot be interpreted to prevent cross-claims among defendants sued by others. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

This section deprives unauthorized insurers only of the right "to maintain an action at law or in equity" in regard to their prohibited business; it says nothing at all about maintaining cross-claims against codefendants. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

This section will not be extended beyond its express terms. Henry Angelo & Sons v. Property Dev. Corp., 63 N.C. App. 569, 306 S.E.2d 162 (1983).

§ 58-54.24. Commissioner authorized to seek injunctions against unauthorized insurers.

Whenever the Commissioner, from evidence satisfactory to him, has reasonable grounds for believing that any person is violating or is about to violate the provisions of G.S. 58-54.21, he may through the Attorney General of this State cause a complaint to be filed in the Superior Court of Wake County to enjoin and restrain such person from continuing or engaging in such violations or doing any act in furtherance thereof. The court shall have jurisdiction over the proceedings and shall have the power to make and enter an appropriate order or judgment granting preliminary or final injunctive relief as in its discretion is proper: Provided, however, that the person alleged to be in violation shall have been served with process as is provided in G.S. 58-54.25. (1967, c. 909, s. 1; 1987, c. 864, s. 61.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, rewrote the catchline, deleted "of Insurance" following "Commissioner," substituted "that any person is violating" for "that any foreign or alien company is violating," substituted "he may" for "the Commissioner may," substituted "restrain such person from continuing or engaging in such violations" for "restrain such company from continuing such violations or engaging therein, or", all in the first sentence, and in the second sentence substituted "jurisdiction over" for "jurisdiction of," substituted "that the person alleged" for "that the company alleged," and substituted "as is provided in G.S. 58-24.25" for "as is provided hereinafter."

§ 58-54.25. Service of process on Secretary of State as agent for unauthorized company.

(c) Upon the return to the Secretary of State of the requested return receipt showing delivery and acceptance of such registered mail, or upon the return of such registered mail showing refusal thereof by such unauthorized insurer, the Secretary of State shall note thereon the date of such return to him and shall attach either the return receipt or such refused mail including the envelope, as the case may be, to the copy of the process, notice or demand theretofore retained by him and shall mail the same to the clerk of the court in which such action or proceeding is pending and in respect of which such process, notice or demand was issued. Such mailing, in addition to the return by the sheriff, shall constitute the due return required by law. The clerk of the court shall thereupon file the same as a paper in such action or proceeding.

(d) Service made under this section shall have the same legal force and validity as if the service had been made personally in this State. The refusal of any such unauthorized insurer to accept delivery of the registered mail provided for in subsection (b) of this section or the refusal to sign the return receipt shall not affect the validity of such service; and any foreign or alien insurer refusing to accept delivery of such registered mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(e) Whenever service of process is made upon the Secretary of State as herein provided the defendant unauthorized insurer shall

have 30 days from the date when the defendant receives or refuses to accept the registered mail containing the copy of the complaint sent as in this section provided in which to appear and answer the complaint in the action or proceeding so instituted. Entries on the defendant's return receipt or the refused registered mail shall be sufficient evidence of such date. If the date of acceptance or refusal to accept the registered mail cannot be determined from the entries on the return receipt or from notations of the postal authorities on the envelope, then the date when the defendant accepted or refused to accept the registered mail shall be deemed to be the date that the return receipt or the registered mail was received back by the Secretary of State.

(1967, c. 909, s. 1; 1987, c. 864, ss. 62-64.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "by such unauthorized insurer" for "by such foreign or alien insurer" near the beginning of subsection (c), substituted "The refusal of any such unauthorized insurer" for "The refusal of foreign or alien insurer" at the beginning of the second sentence of subsection (d), and substituted "the defendant unauthorized insurer" for "the defendant foreign or alien insurer" near the beginning of the first sentence of subsection (e).

Article 4.

Insurance Premium Financing.

§ 58-55. Definitions.

CASE NOTES

Law Governing Premium Finance Agreements. — The North Carolina Insurance Premium Financing Act, governs secured transactions involving premium finance agreements. In re Universal Motor Express, Inc., 72 Bankr. 208 (Bankr. W.D.N.C. 1987).

§ 58-57. Investigations; hearings.

For the purpose of conducting investigations and holding hearings on insurance premium finance companies, the Commissioner shall have the same authority as that vested in him by G.S. 58-9.2 and 58-9.7. (1963, c. 1118; 1987, c. 864, s. 3(b).)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "58-9.7" for "58-44.6."

§ 58-57.3. Rebates and inducements prohibited; assignment of insurance premium finance agreements.

CASE NOTES

Filing Unnecessary for Initial Assignment of Unearned Premiums to Premium Finance Company. — As no filing is necessary for the validity of a subsequent assignment by the insurance premium finance company, no filing is necessary for the validity of the initial assignment of unearned premiums to insurance premium finance company, possession of the documents themselves being all that is required. In re Universal Motor Express, Inc., 72 Bankr. 208 (Bankr. W.D.N.C. 1987).

§ 58-60. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.

When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless such cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice be mailed to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. A notice thereof shall also be mailed to the insurance agent.

(2) After expiration of such period, the insurance premium finance company shall mail the insurer a request for cancellation, including a copy of the power of attorney, and shall mail a copy of the request for cancellation to the insured at his last known address as shown on the insurance premium finance agreement.

(3) Upon receipt of a copy of such request for cancellation notice by the insurer, the insurance contract shall be cancelled with the same force and effect as if the aforesaid request for cancellation had been submitted by the insured himself, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive such notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return what-

ever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or insureds. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, such excess shall be remitted promptly to the order of the insured, subject to the minimum service charge provided for in this Article.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract. (1963, c. 1118; 1967, c. 825; 1969, c. 941; 1987, c. 864, s. 22.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, deleted "or insurers" following "by the insurer" in subdivision (3) and deleted "or the insured" following "unless he" in subdivision (4).

CASE NOTES

Filing of Premium Finance Agreement Unnecessary. — Since the purpose of any filing is to give notice to other potential creditors, there is no need for notice of a premium finance agreement, as the debtor cannot assign its unearned premiums to any other parties. In re Universal Motor Express, Inc., 72 Bankr. 208 (Bankr. W.D.N.C. 1987).

As no filing is necessary for the validity of a subsequent assignment by the insurance premium finance company, no filing is necessary for the validity of the initial assignment of unearned premiums to insurance premium finance company, possession of the documents themselves being all that is required. In re Universal Motor Express, Inc., 72 Bankr. 208 (Bankr. W.D.N.C. 1987).

No Requirement of Perfection of Right to Unearned Premiums. — Under North Carolina law, there is no requirement that any right to unearned premiums in a premium financing agreement be perfected in any manner. In re Universal Motor Express, Inc., 72 Bankr. 208 (Bankr. W.D.N.C. 1987).

§ 58-61. Violations; penalties.

Any person who shall engage in the business referred to in this Article without first receiving a license, or who shall fail to secure a renewal of his license upon the expiration of the license year, or shall engage in the business herein referred to after the license has been suspended or revoked as herein provided, or who shall fail or refuse to furnish the information required of the Commissioner, or who shall willfully and knowingly enter false information on an insurance premium finance agreement, or who shall fail to observe the rules and regulations made by the Commissioner pursuant to this Article, shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be imprisoned, or both, at the discretion of the court. (1963, c. 1118; 1965, c. 1040; 1985, c. 666, s. 20.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)".

Article 5.

License Fees and Taxes.

§ 58-63. Schedule of fees and charges.

The Commissioner of Insurance shall collect and pay into the State treasury fees and charges as follows:

(1) For filing and examining statement preliminary to admission, twenty dollars ($20.00); for filing and auditing annual statement, ten dollars ($10.00); for filing any other papers required by law, one dollar ($1.00); for each certificate of examination, condition, or qualification of company or association, two dollars ($2.00); for each seal when required, two dollars ($2.00); for filing charter and other papers of a fraternal order, preliminary to admission, twenty-five dollars ($25.00).

(1899, c. 54, ss. 50, 68, 80, 81, 82, 87, 90, 92; 1901, c. 391, s. 7; c. 706, s. 2; 1903, c. 438, ss. 7, 8; c. 536, s. 4; cc. 680, 774; 1905, c. 588, s. 68; Rev., s. 4715; 1913, c. 140, s. 1; 1919, c. 186, s. 6; C.S., s. 6318; 1921, c. 218; 1935, c. 334; 1939, c. 158, s. 208; 1945, c. 386; 1947, c. 721; 1957, cc. 133, 1047; 1959, c. 911; 1963, c. 692; 1977, c. 376, s. 2; c. 802, s. 50; 1983, c. 790, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "two dollars ($2.00)" for "one dollar ($1.00)" following "for each seal when required" in subdivision (1).

§ 58-66. (Effective February 1, 1988) Licenses run from July 1; pro rata payment.

The license required of insurance companies shall continue for the next ensuing 12 months after July 1 of each year, unless revoked as provided in this Chapter; but the Commissioner of Insurance may, when the annual license tax exceeds twenty-five dollars ($25.00), receive from applicants after July 1 so much of the license fee required by law as may be due pro rata for the remainder of the year, beginning with the first day of the current month. Application for renewal of the company license must be submitted on or before the first day of March on a form to be supplied by the Commissioner of Insurance. Upon satisfying himself that the company has met all requirements of law and appears to be financially solvent he shall forward renewal license to the company. Any company which does not qualify for renewal license before July 1 shall cease to do business in the State of North Carolina as of July 1, unless license is sooner revoked by the Commissioner.

Before issuing any license for the year, beginning July 1, 1955, the Commissioner shall collect, in addition to the annual license fee, a pro rata fee for the three months of April, May and June, 1955, collection of which fee shall extend licenses expiring April 1,

§ 58-66 has a delayed effective date. See notes for date.

1955, until July 1, 1955, if accepted by the Commissioner of Insurance.

Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies. (1899, c. 54, s. 78; Rev., s. 4718; C.S., s. 6321; 1955, c. 179, s. 1; 1987, c. 629, s. 16.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, deleted "as listed in G.S.105-228.7, which licenses shall run from April 1 of each year" at the end of the final paragraph.

§ 58-67: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

§ 58-68. Policyholders to furnish information.

To enable the Commissioner of Insurance the better to enforce the payment of the taxes imposed by this Chapter and by G.S. 105-228.5 every corporation, firm, or individual doing business in the State shall, upon demand of the Commissioner, furnish to him, upon blanks to be provided by him, a statement of the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the Commissioner calls for, or shall file an affidavit with the Commissioner that all their insurance is placed in companies licensed to do business in this State. (1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8; Rev., s. 4720; C.S., s. 6323; 1987, c. 864, s. 38.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "105-228.5" for "105-121."

SUBCHAPTER II. INSURANCE COMPANIES.

ARTICLE 6.

General Domestic Companies.

§ 58-72. Kinds of insurance authorized.

The kinds of insurance which may be authorized in this State, subject to the other provisions of this Chapter, are set forth in the following paragraphs. Except to the extent an insurer participates in a risk sharing plan under Article 37 of this Chapter, nothing herein contained shall require any insurer to insure every kind of risk which it is authorized to insure. Except to the extent an insurer participates in a risk sharing plan under Article 37 of this Chapter no insurer may transact any other business than that specified in its charter and articles of association. The power to do any

§ 58-66 has a delayed effective date. See notes for date.

§ 58-67 has a delayed repeal date. See notes for date.

kind of insurance against loss of or damage to property shall include the power to insure all lawful interests in such property and to insure against loss of use and occupancy, rents and profits resulting therefrom; but no kind of insurance shall be deemed to include life insurance or insurance against legal liability for personal injury or death unless specified herein. In addition to any power to engage in any other kind of business than an insurance business which is specifically conferred by the provisions of this Chapter, any insurer authorized to do business in this State may engage in such other kind or kinds of business to the extent necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this State. Each of the following paragraphs indicates the scope of the kind of insurance business specified therein:

(22) "Miscellaneous insurance," meaning insurance against any other casualty authorized by the charter of the company, not included in subdivisions (1) to (21) inclusive of this section, which is a proper subject of insurance. (1899, c. 54, ss. 24, 26; 1903, c. 438, s. 1; Rev., s. 4726; 1911, c. 111, s. 1; C.S., s. 6327; 1945, c. 386; 1947, c. 721; 1953, c. 992; 1967, c. 624, s. 1; 1969, c. 616, s. 1; 1979, c. 714, s. 2; 1986, Ex. Sess., c. 7, ss. 2, 3; 1987, c. 864, ss. 39, 40.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Section 12 of Session Laws 1986, Extra Session, c. 7 is a severability clause.

Effect of Amendments. — The 1986 Extra Session amendment, effective February 18, 1986, rewrote the second sentence of the introductory paragraph, which formerly read "Nothing herein contained shall require any insurer to insure every kind of risk which it is authorized to insure," and rewrote the second sentence of subdivision (22), which formerly read "No corporation so formed may transact any other business than that specified in its charter and articles of association."

The 1987 amendment, effective August 14, 1987, inserted the third sentence of the introductory paragraph, and deleted a former second sentence of subdivision (22), relating to the transaction of other business.

CASE NOTES

No public policy of this state precludes liability insurance coverage for punitive damages in medical malpractice cases. This section appears to authorize insurers to provide coverage for punitive damages. The modern trend and better reasoned decisions in other jurisdictions are to the effect that it is not against public policy to insure against punitive damages. Thus, in North Carolina, punitive damages may be awarded in negligence cases for wanton or gross acts. Mazza v. Medical Mut. Ins. Co., 311 N.C. 621, 319 S.E.2d 217 (1984).

A contract to pay on behalf of its insured "... all sums which the insured shall become legally obligated to pay as damages ..." as part of a physician's liability insurance policy is so broad that it must be interpreted to provide coverage for punitive damages for medical malpractice. Mazza v. Medical Mut. Ins. Co., 311 N.C. 621, 319 S.E.2d 217 (1984).

§ 58-72.1. Credit allowed a domestic ceding insurer.

(a) As used in this section, in G.S. 58-72.2, and in G.S. 58-72.3:
(1) "Insurer" includes an underwriting member of an insurance exchange.
(2) "Liability" includes all reserves.
(3) "Same standards of solvency" means, at a minimum, the capital and surplus requirements applicable to a domestic insurer transacting the same lines of insurance or reinsurance.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:
(1) The reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance or otherwise accredited as a reinsurer in this State; or licensed in at least one state that employs standards regarding credit for reinsurance substantially similar to those applicable under this subsection and the assuming insurer conforms to the same standards of solvency that would be required of the insurer if it were licensed in this State; or
(2) The reinsurance is ceded to an assuming insurer that maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. To enable the Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall annually report to the Commissioner information substantially the same as that required to be reported by licensed insurers on the National Association of Insurance Commissioners annual statement form. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, shall include a trusteed surplus of not less than twenty million dollars ($20,000,000). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, shall include a trusteed surplus of not less than one hundred million dollars ($100,000,000); and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants. This trust shall be established in a form approved by the Commissioner in a United States bank or trust company that is a member of the Federal Reserve System. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Com-

missioner. The trust described in this subdivision must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

No later than February 28 of each year the trustees of the trust shall report to the Commissioner in writing, set forth the balance of the trust, and list the trust's investments at the preceding year's end; and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31; or

(3) The reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1) or (2) of this subsection, but only with respect to the insurance of risks located in jurisdictions other than the United States where such reinsurance is required by applicable law or regulation of that jurisdiction; and

(4) The reinsurance is documented by a policy, certificate, treaty, or other form of agreement that is properly executed by an authorized officer of the assuming insurer. In the event that the reinsurance is ceded through an underwriting manager or agent, the manager or agent shall provide to the domestic ceding insurer evidence of his authority to assume reinsurance for and on behalf of the assuming insurer. The evidence shall consist of either an acceptable letter of authority executed by an authorized officer of the assuming insurer or a copy of the actual agency agreement between the underwriting manager or agent and the assuming insurer; and the evidence shall be specific as to the classes of business within the authority and as to the term of the authority.

(c) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by subdivisions (b)(1) and (b)(2) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give that court jurisdiction, and will abide by the final decision of that court, or of any appellate court in the event of an appeal; and

(2) That the assuming insurer will designate the Commissioner as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This subsection shall not conflict with the obligation of parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement. (1985, c. 572, s. 1.)

Editor's Note. — Session Laws 1985, c. 572, s. 5 makes this section effective Oct. 1, 1985.

§ 58-72.2. Reduction from liability for reinsurance ceded to an assuming insurer.

A reduction from liability for reinsurance ceded to an assuming insurer that does not meet the requirements of G.S. 58-72.1 shall be allowed in an amount that does not exceed the liabilities carried by the ceding insurer for funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract, if that security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; and, in the case of a trust, held in a United States bank or trust company that is a member of the Federal Reserve System. This security may be in the form of:

(1) Cash;

(2) Securities that are listed by the Securities Valuation Office of the National Association of Insurance Commissioners and that are qualified as admitted assets;

(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a bank or trust company that is a member of the Federal Reserve System; or

(4) Any other form of security that is acceptable to the Commissioner. (1985, c. 572, s. 1.)

Editor's Note. — Session Laws 1985, c. 572, s. 5 makes this section effective Oct. 1, 1985.

§ 58-72.3. Insolvency of ceding insurer; exceptions.

No credit shall be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the basis of claims allowed against the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary receiver except (1) where the contract specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer or (2) where the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution of the obligations of the ceding insurer to the payees. (1985, c. 572, s. 1.)

Editor's Note. — Session Laws 1985, c. 572, s. 5 makes this section effective Oct. 1, 1985.

§ 58-75.1. Maintenance and removal of records and assets.

(a) Every domestic insurer that has its home or principal office in a location outside this State shall nevertheless maintain an office or offices in this State and keep therein for such period as the Commissioner may by regulation require complete records of its assets, transactions, and affairs, specifically including:

(1) Financial records;
(2) Corporate records;
(3) Reinsurance document;
(4) Access to all accounting transactions and access in this State, upon demand by the Commissioner, to all original accounting documents;
(5) Claim files; and
(6) Payment of claims, in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(b) Every domestic insurer that has its home or principal office in a location outside this State shall have and maintain its assets in this State, except as to:

(1) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State; and
(2) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices, regional home offices, and operations offices, located outside this State as referred to in G.S. 58-75.2.

(c) The removal from this State of all or a material part of the records or assets of a domestic insurer that has its home or principal office outside this State except pursuant to a plan of merger or consolidation approved by the Commissioner under or for such reasonable purposes and periods of time as may be approved by the Commissioner in writing in advance of such removal, or concealment of such records or assets or material part thereof from the Commissioner is prohibited. Any person who, without the prior approval of the Commissioner, removes or attempts to remove such records or assets or such material part thereof from the office or offices in which they are required to be kept and maintained under subsection (a) of this section or who conceals or attempts to conceal such records from the Commissioner, in violation of this subsection, shall be guilty of a Class J felony. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this State, beyond the period therefor specified in the consent of the Commissioner under which consent the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the Commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of Article 17A of this Chapter.

(d) This section is subject to the exceptions provided for in G.S. 58-75.2. (1985 (Reg. Sess., 1986), c. 1013, s. 7.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 18, makes this section effective October 1, 1986.

§ 58-75.2. Exceptions to requirements of G.S. 58-75.1.

The provisions of G.S. 58-75.1 shall not be deemed to prohibit or prevent an insurer from:

(1) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and reasonably necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the Commissioner at his request.

(2) Having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside this State as required by other jurisdictions as a condition of transacting insurance in such jurisdictions reasonably and customarily required in the regular course of its business.

(3) Establishing and maintaining its principal operations offices, its usual operations records, and such of its assets as may be necessary or convenient for the purpose, in another state in which the insurer is authorized to transact insurance in order that general administration of its affairs may be combined with that of an affiliated insurer or insurers, but subject to the following conditions:

a. That the Commissioner consents in writing to such removal of offices, records, and assets from this State upon evidence satisfactory to him that the same will facilitate and make more economical the operations of the insurer, and will not unreasonably diminish the service or protection thereafter to be given the insurer's policyholders in this State and elsewhere;

b. That the insurer will continue to maintain in this State its principal corporate office or place of business, and maintain therein available to the inspection of the Commissioner complete records of its corporate proceedings and a copy of each financial statement of the insurer current within the preceding five years, including a copy of each interim financial statement prepared for the information of the insurer's officers or directors;

c. That, upon the written request of the Commissioner, the insurer will with reasonable promptness produce at its principal corporate offices in this State for examination or for subpoena, its records or copies thereof relative to a particular transaction or transactions of the insurer as designated by the Commissioner in his request; and

d. That if at any time the Commissioner finds that the conditions justifying the maintenance of such offices, records, and assets outside of this State no longer exist, or that the insurer has willfully and knowingly

violated any of the conditions stated in sub-subdivisions b. and c., the Commissioner may order the return of such offices, records, and assets to this State within such reasonable time, not less than six months, as may be specified in the order; and that for failure to comply with such order, as thereafter modified or extended, if any, the Commissioner shall suspend or revoke the insurer's certificate of authority.

(4) Placing its investment assets in one or more custodial accounts inside or outside of this State with banks, trust companies, or other similar institutions pursuant to custodial agreements approved by the Commissioner.

(5) Permitting policyholder and certificate holder records and claims and other information to be kept and maintained by agents, general agents, third-party administrators, creditors, employers, associations, and others in the ordinary course of business in a manner customary or suitable to the kind or kinds of insurance transacted; provided, however, that the insurer shall, upon reasonable notice, make available to the Commissioner or his designee any records or other information permitted by this subsection to be maintained outside this State. (1985 (Reg. Sess., 1986), c. 1013, s. 7.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 18, makes this section effective October 1, 1986.

§ 58-75.3. Approval as a domestic insurer.

Any insurer that is organized under the laws of any other state and is licensed to transact the business of insurance in this State may become a domestic insurer by (i) complying with laws and regulations regarding the organization and licensing of a domestic insurer of the same type; (ii) designating its principal place of business at a place in this State; and (iii) obtaining the approval of the Commissioner. Such domestic insurer shall be entitled to like certificates of authority to transact business in this State and shall be subject to the authority and jurisdiction of this State. Articles of Incorporation of such domestic insurer may be amended to provide that the corporation is a continuation of the corporate existence of the original foreign corporation through adoption of this State as its corporate domicile and that the original date of incorporation in its original domicilliary state is the date of incorporation of such domestic insurer. (1987, c. 752, s. 10.)

Editor's Note. — Session Laws 1987, c. 752, s. 21 makes this section effective upon ratification. The act was ratified August 7, 1987.

§ 58-75.4. Conversion to foreign insurer.

Any domestic insurer may, upon the approval of the Commissioner, transfer its domicile to any other state in which it is licensed to transact the business of insurance. Upon such a transfer such insurer shall cease to be a domestic insurer and shall be licensed in this State, if qualified, as a foreign insurer. The Commissioner shall approve any such proposed transfer unless he determines that such transfer is not in the interest of the policyholders of this State. (1987, c. 752, s. 10.)

Editor's Note. — Session Laws 1987, c. 752, s. 21 makes this section effective upon ratification. The act was ratified August 7, 1987.

§ 58-75.5. Effects of redomestication.

The certificate of authority, agent appointments and licenses, rates, and other items that the Commissioner authorizes or grants, in his discretion, that are in existence at the time any insurer licensed to transact the business of insurance in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method, shall continue in full force and effect upon such transfer if such insurer remains duly licensed to transact the business of insurance in this State. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the insurer or its new location unless so ordered by the Commissioner. Every transferring insurer shall file new policy forms with the Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner: Provided, however, every such transferring insurer shall (i) notify the Commissioner of the details of the proposed transfer and (ii) promptly file any resulting amendments to corporate documents filed or required to be filed with the Commissioner. (1987, c. 752, s. 10.)

Editor's Note. — Session Laws 1987, c. 752, s. 21 makes this section effective upon ratification. The act was ratified August 7, 1987.

§ 58-77. Amount of capital and/or surplus required; impairment of capital or surplus.

The amount of capital and/or surplus requisite to the formation and organization of companies under the provisions of this Chapter shall be as follows:

(5) Mutual Fire and Marine Companies.

a. Limited assessment companies. — A limited assessment mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72 only when it has no less than five hundred thousand dollars ($500,000) of insurance in not fewer than 500

separate risks subscribed with a paid-in initial surplus of at least three hundred thousand dollars ($300,000), which surplus shall at all times be maintained. The assessment liability of a policyholder of a company organized in accordance with the provisions of this paragraph shall not be limited to less than five annual premiums provided, such limited assessment company may reduce the assessment liability of its policyholders from five annual premiums as set out herein to one additional annual premium when the free surplus of such company amounts to not less than three hundred thousand dollars ($300,000), which surplus shall at all times be maintained.

b. Assessable mutual companies. — An assessable mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5) and (6) of G.S. 58-72 (fire, miscellaneous property and water damage), with an unlimited assessment liability of its policyholders only when it shall have not less than five hundred thousand dollars ($500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus equal to twice the amount of the maximum net retained liability under the largest policy of insurance issued by such company; but not less than sixty thousand dollars ($60,000) which surplus shall at all times be maintained. Provided such company, when its charter so permits, in addition may be licensed to do one or more of the kinds of insurance specified in subdivisions (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72, with an unlimited assessment liability of its policyholders, when its free surplus amounts to not less than sixty thousand dollars ($60,000), which surplus shall at all times be maintained.

c. Nonassessable mutual companies. — A nonassessable mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72 and may be authorized to issue policies under the terms of which a policyholder is not liable for any assessments in addition to the premium set out in the policy only when it shall have not less than five hundred thousand dollars ($500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus of not less than eight hundred thousand dollars ($800,000), which surplus shall at all times be maintained.

d. Town or county mutual insurance companies. — A town or county mutual insurance company with unlimited assessment liability may be organized in the manner prescribed in this Chapter and licensed to do the kinds of insurance specified in subdivision (4) of G.S. 58-72 (fire) only when it shall have not less than fifty thousand dollars ($50,000) of insurance in not fewer than

50 separate risks subscribed with a paid-in initial surplus of not less than fifteen thousand dollars ($15,000), which surplus shall at all times be maintained. A town or county mutual insurance company may, in addition to writing the business specified in subdivision (4) of G.S. 58-72 (fire insurance), cover in the same policy the hazards usually insured against under an extended coverage endorsement when such company has and at all times maintains in addition to the surplus hereinbefore required, an additional surplus of not less than twenty-five thousand dollars ($25,000) or not less than an amount equivalent to one percent (1%) of the total amount of net retained insurance in force, whichever is the larger sum: Provided, that such company may not operate in more than five counties in this State that are adjacent to the county in which its home office is located.

(9) Time for Compliance. — Any domestic, foreign or alien company licensed to do business in North Carolina prior to July 1, 1979, shall be permitted to continue to do the same kinds of business which it was authorized to do on such date without being required to increase its capital and/or surplus, provided however, such insurers shall increase the capital and surplus requirements to the amounts set forth in this section G.S. 58-77 on or before July 1, 1987, but the requirements of this section as to capital and surplus shall apply to such companies as a prerequisite to writing additional lines of business, and to such companies as a prerequisite to commencing business if unlicensed prior to July 1, 1979.

(1899, c. 54, s. 26; 1903, c. 438, s. 4; Rev., s. 4729; 1907, c. 1000, s. 5; 1913, c. 140, s. 2; C.S., s. 6332; 1929, c. 284, s. 1; 1945, c. 386; 1947, c. 721; 1963, c. 943; 1965, c. 947; 1967, c. 300; 1971, c. 536; 1973, c. 686; 1979, c. 421, s. 1; 1983, c. 472; 1985, c. 666, s. 75; 1985 (Reg. Sess., 1986), c. 1013, s. 10.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1983 amendment, effective June 8, 1983, substituted "July 1, 1985" for "July 1, 1983" near the middle of subdivision (9).

The 1985 amendment, effective July 10, 1985, substituted "July 1, 1987" for "July 1, 1985" in subdivision (9).

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted "five counties in this State that are adjacent to the county in which its home office is located" for "three adjacent counties in this State" at the end of subdivision (5)d.

§ 58-79. Investments; life.

(a) Investments Specified. — Every domestic stock and mutual life insurance company must have and continually keep to the extent of an amount equal to its entire reserves, as hereinafter defined, an entire capital, if any, and minimum required surplus, invested in:

(1) Coin or currency of the United States of America, on hand or on deposit in a national or state bank or trust company or invested in the shares of any building and loan or sav-

ings and loan association, or invested in the shares of any federal savings and loan association.

(2) Interest-bearing bonds, notes, certificates of indebtedness, bills or other direct interest-bearing obligations of the United States of America or of the Dominion of Canada or other interest-bearing obligations fully guaranteed both as to principal and interest by the United States of America, or by the Dominion of Canada.

(3) Interest-bearing bonds of any state, District of Columbia, territory or possession of the United States of America, or of any province of the Dominion of Canada, or of any county, or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(4) Interest-bearing bonds of any commission, authority or political subdivision having legal authority to issue the same of any state, District of Columbia, territory or possession of the United States of America or of any county or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(5) Federal farm loan bonds issued by federal land banks organized under the provisions of the act of Congress known as the Federal Farm Loan Act. Any notes, bonds, debentures, or similar type obligations, consolidated or otherwise, issued by any farm credit institution pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92-181), as amended. Interest-bearing bonds, notes or other interest-bearing obligations of any solvent corporation organized under the laws of the United States of America or of the Dominion of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States of America, or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, the Asian Development Bank, the Inter-American Development Bank, and the African Development Bank. Equipment trust obligations or certificates or other secured instruments evidencing an interest in (i) transportation equipment; and (ii) industrial and utility equipment and related buildings and other construction whether or not affixed to land, and related leases, easements, uses, rights-of-way and any other appurtenances thereto; all of which items listed in parts (i) and (ii) of this sentence are and will be wholly or in part within the United States of America and a right to receive determined portions of rental, purchases or other fixed obligatory payments for the use or purchase of such items.

(6) Dividend-paying stocks or shares of any corporation created or existing under the laws of the United States of America or of any state, District of Columbia, territory or possession of the United States of America; notwithstanding any provisions in this section to the contrary no company may invest more than twenty percent (20%) of its total admitted assets in common stocks; and further provided, that no company may invest more than three percent (3%) of its admitted assets in the stock or shares of any one corporation, and provided further, except as the Commissioner shall permit, that such investment in any one corporation

not engaged solely in the business of insurance shall not result in the acquisition of more than twenty percent (20%) of the outstanding voting stock or shares of such corporation. The restrictions in this section do not apply to shares of building and loan or savings and loan associations or federal savings and loan associations.

(7) Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple or improved leasehold real estate in the District of Columbia or in any state, territory or possession of the United States of America, to an amount not exceeding seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real estate; provided that such loans may exceed seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real estate to the extent that an admitted mortgage guaranty insurer, as defined in G.S. 58-72(17), has insured or guaranteed or made a commitment to insure or guarantee the amount by which such loan is in excess of seventy-five percent (75%) of the fair market value; provided, further, that, in no event shall any such loan exceed ninety-five percent (95%) of the fair market value of the property. No loan may be made on leasehold real estate unless the lease has at least 30 years to run before its termination and the loan matures at least 20 years before expiration of the lease. Whenever such loans are made upon fee simple, or improved leasehold real estate which is improved by a building or buildings, the said improvements shall be insured against loss by fire, and the fire insurance policies shall contain a standard mortgage clause and shall be delivered to the mortgagee as additional security for the said loan.

Loans secured by first mortgages which the Federal Housing Administrator has insured or has made a commitment to insure, or invested in mortgage notes or bonds so insured, and neither the limitations of this section nor any other law of this State requiring security upon which loans shall be made, or prescribing the nature, amount or forms of such security, or limiting the interest rates upon loans, shall be deemed to apply to such insured mortgage loans.

Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple real estate in connection with which the Veterans Administration of the United States has guaranteed, or has made a commitment to guarantee, a portion of the loan pursuant to the Servicemen's Readjustment Act of 1944, and amendments thereto, provided the amount of any such loan, less the portion thereof guaranteed by said Veterans Administration, shall not exceed seventy-five percent (75%) of the fair market value of such real estate.

In all investments made upon mortgages, the evidence of the debt, if any, shall accompany the mortgage or deed of trust.

(8) Ground rents in the District of Columbia or any state of the United States of America, provided, that in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between date of

acquisition and earliest redemption date or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premium paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(9) Collateral loans secured by pledge of any security named in subdivisions (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection; provided that the current market value of such pledged securities shall be at all times during the continuance of such loans at least twenty-five percent (25%) more than the unpaid balance of the amount loaned on them.

(10) Loans upon the policies of the company; provided that the total indebtedness against any policy shall not be greater than the loan value of such policy.

(11) No domestic company may directly or indirectly acquire or hold real property except as follows:

a. Such land and buildings thereon in which it has its principal office and such real estate as shall be requisite for the convenient transaction of its own business; the amount invested in such real property shall not exceed ten per centum (10%) of the investing company's admitted assets, but the Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as he may deem proper upon a hearing held before him.

b. Property mortgaged to it in good faith as security for loans previously contracted for money due.

c. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

d. Additional real property and equipment incident to real property, if necessary or convenient for the purpose of enhancing the sale value of real property previously acquired or held by it under paragraphs b and c of this subdivision and subject to the prior written approval of the Commissioner.

e. 1. Real estate acquired for the purpose of leasing the same to any person, firm, or corporation, or real estate already leased under the following conditions:

I. A. Where there has already been erected on said property a building or other improvements satisfactory to the purchaser, or

B. Where the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or

C. Where the lessor under the terms and conditions of a lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on said property;

II. That the said improvements shall remain on the said property during the period of the

lease, and in cases where the said improvements are put upon said property at the cost of the lessee the said improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate;

III. That during the term of the lease the tenant shall keep and maintain the said improvements in good repair. Real estate acquired pursuant to the provisions of this subparagraph (a)(11)e1 shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of this subparagraph, nor shall real estate acquired pursuant to this subparagraph (a)(11)e1 be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by at least two percent (2%) of the investment allocable to the improvements on such real estate. The total investments of any company under this subparagraph (a)(11)e1 shall not exceed ten percent (10%) of its assets, nor more than fifty percent (50%) of its capital and surplus whichever is less.

2. Subject to approval of the Commissioner, real estate for recreation, hospitalization, convalescent and retirement purposes of its employees. Such investment under this subparagraph (a)(11)e2 shall not exceed five percent (5%) of the company's surplus.

3. Subject to the approval of the Commissioner, real estate for public or private housing developments. Such investment under this subparagraph (a)(11)e3 shall be subject to and not exceed the limitation provided for in the last sentence of subparagraph (a)(11)e1 III hereof.

4. No investment shall be made by any company pursuant to this paragraph e which will cause such company's investment in all real property owned or held by it directly or indirectly to exceed fifteen percent (15%) of its assets.

f. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose; provided, however, notwithstanding any express or implied prohibitions, and in addition to other investments permitted by this section, any incorporated company may invest up to six percent (6%) of its assets in real estate for the production of income. Real estate acquired under paragraph (a)(11)a and subparagraph (a)(11)e2 of this section which has ceased to be used or to be necessary for the purposes stated therein shall be sold within five years thereafter, unless the company procures a certificate from the Commissioner that the interest of the company will materially suffer by a forced sale of such real estate in

which event the time for the sale may be extended to such a time as the Commissioner may direct in the certificate. Any real estate acquired under paragraphs b, c, and d of this subdivision (11) shall be sold within five years after the company has acquired title thereto; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Any real estate acquired under subparagraph (a)(11)e1 of this section shall within five years after the termination or expiration of such lease be sold or released for an additional term pursuant to the provisions of subparagraph (a)(11)e1; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Nothing contained herein prevents any insurance company from improving or conveying its real estate, notwithstanding the lapse of five years without having procured such certificate from the Commissioner.

(12) Electronic computer or data processing apparatus, including software, and related equipment constituting a data processing, recordkeeping, or accounting system or systems if the cost of such system or systems is at least twenty-five thousand dollars ($25,000), but not more than two percent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed 10 calendar years.

(13) Interest, rents or other fixed income due and accrued on any of the investments named in subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (10) and (11) of this subsection pursuant to regulations promulgated by the Commissioner.

(14) Notwithstanding any expressed or implied prohibitions, a company may, after the date of the enactment of this subdivision, invest in investments which do not otherwise qualify under any other provision of this subsection; provided, however, that the investments authorized by this subdivision shall not exceed the lesser of (i) five percent (5%) of its admitted assets or (ii) the amount by which total admitted assets exceed total liabilities (except capital) plus six hundred thousand dollars ($600,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the Commissioner of Insurance.

(15) To the extent necessary to satisfy the investment requirements as to reserves and entire capital, if any, and minimum required surplus, no company shall make any investment in or loan on any of the securities mentioned in this section, which are in default as to principal or interest or as to which the dividend on the last preceding dividend date has been passed.

(16) Notwithstanding any expressed or implied prohibitions, a company may effect or maintain bona fide hedging transactions pertaining to securities otherwise eligible for investment under this section, including, but not limited to, (i) financial futures contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other rights to require another person to purchase such securities. Such

contracts, options, calls, puts and rights shall be traded on a securities exchange or board of trade regulated under the laws of the United States. For purposes of this section, a "bona fide hedging transaction" means a purchase or sale of such contract, warrant, option, call, put or right, as the case may be, entered into for the purpose of offsetting changes in the market value of a security held by the company.

(1899, c. 54, s. 27; Rev., s. 4731; 1907, cc. 798, 998; 1911, c. 32; 1913, c. 200; C.S., s. 6334; 1923, c. 73; 1925, c. 187; 1945, c. 386; 1947, c. 721; 1951, c. 284; c. 781, s. 8; 1955, c. 178, s. 1; 1959, c. 286; 1961, cc. 263, 378; 1967, c. 842; 1969, c. 1199; 1971, c. 386, s. 1; 1973, c. 239, s. 5; 1979, c. 777; 1981, c. 306; c. 760, ss. 1-5; 1983, cc. 661, 664; 1985, c. 313, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The first 1983 amendment, effective July 1, 1983, substituted "Electronic computer or data processing apparatus, including software, and related equipment constituting a data processing, recordkeeping, or accounting system or systems" for "Electronic and mechanical machines constituting a data processing and accounting system" and inserted "or systems" following "cost of such system" in subdivision (a)(12).

The second 1983 amendment, effective July 1, 1983, added subdivision (a)(16).

The 1985 amendment, effective June 3, 1985, substituted "the Asian Development Bank, the Inter-American Development Bank, and the African Development Bank" for "Asian Development Bank and Inter-American Development Bank" at the end of the third sentence of subdivision (a)(5).

§ 58-79.1. Investments; fire, casualty and miscellaneous.

(a) Minimum Capital Investments. — Before investing any of its funds in any other classes of securities or types of investments, every domestic stock insurance company other than a life insurance company or a fraternal benefit association, shall to the extent of an amount equal in value to the minimum capital required by law for a domestic stock corporation authorized to transact the same kinds of insurance, invest its funds only in securities of the classes described in this section and which are not in default as to principal or interest. Every domestic mutual insurance company, other than a life insurance company, before investing any of its funds in any other classes of securities or types of investment, shall invest its funds only in such securities to the extent of an amount equal in value to the minimum assets or surplus required of such company by the laws of North Carolina. Investments equal in value to such an amount and of the kind or kinds hereinafter prescribed in this section shall at all times be maintained free and clear from any lien or pledge other than as impressed upon a deposit with any government within the United States or upon trusteed assets held in trust for the security of all its policyholders and creditors. Minimum cpaital investments of such an insurer shall consist of the following classes of securities and not less than sixty percent (60%) of the total amount of the required minimum capital investments shall consist of the classes specified in subdivisions (1) and (2) following:

(1) Bonds, or other evidences of indebtedness of the Unites States of America or of any of its agencies when such obli-

gations are guaranteed as to principal and interest by the United States of America.

(2) Bonds, or stocks or other evidences of indebtedness which are direct obligations of the State of North Carolina or of any county, district or municipality thereof.

(3) Bonds, or other evidences of indebtedness which are direct obligations of any state of the United States.

(4) Mortgage loans or deeds of trust as specified in paragraphs a or c of subdivision (6) of subsection (c) on property located in this State.

(5) Ground rents as specified in subdivision (7) of subsection (c).

(6) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, the Asian Development Bank, the Inter-American Development Bank, and the African Development Bank.

(1945, c. 386; 1955, c. 178, s. 2; 1967, c. 624, ss. 2-4; 1971, c. 386, s. 2; 1985, c. 313, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective June 3, 1985, substituted "the Asian Development Bank, the Inter-American Development Bank, and the African Development Bank" for "Asian Development Bank and Inter-American Development Bank" at the end of subdivision (a)(6).

Article 8.

Mutual Insurance Companies.

§ 58-97. Dividends to policyholders.

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a dividend to policyholders from its surplus, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by such policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, which dividends shall be uniform in rate and applicable to the majority of risks within such general kind of insurance, exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on such class or classes if the conditions applicable to such class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment thereof be

executed. Neither the payment of dividends nor the rate thereof may be guaranteed by any company, or its agent, prior to the declaration of the dividend by the board of directors of such company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its surplus, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment thereof be executed. Neither the payment of dividends nor the rate thereof may be guaranteed by any company, or its agent, prior to the declaration of the dividend by the board of directors of such company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks. (1899, c. 54, s. 35; Rev., s. 4741; C.S., s. 6351; 1935, c. 89; 1945, c. 386; 1947, c. 721; 1955, c. 645; 1983, c. 374, ss. 2, 3.)

Effect of Amendments. — The 1983 amendment, effective May 23, 1983, designated the existing provisions as subsection (a), in the first sentence of subsection (a) substituted "stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith" for "stock or mutual, other than life," and added subsection (b).

Article 12A.

Insurer Holding Registration and Disclosure Act.

§ 58-124.8. Criminal proceedings.

Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Article, the Commissioner may cause criminal proceedings to be instituted in the court having criminal jurisdiction for the county in which the principal office of the insurer is located or if such insurer has no such office in the State, then in the criminal court for Wake County against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Article shall be guilty of a misdemeanor and, upon conviction, may be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000). Any individual who willfully violates this Article shall be guilty of a misde-

meanor and, upon conviction, may be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or, if such willful violation involves the deliberate perpetration of a fraud upon the Commissioner, imprisoned not more than two years, or both. (1971, c. 513, s. 1; 1985, c. 666, s. 23.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000)" for "not more than five hundred dollars ($500.00)" in the last two sentences and inserted "shall be guilty of a misdemeanor and, upon conviction," also in the last two sentences.

Article 12B.

North Carolina Rate Bureau.

§ 58-124.17. North Carolina Rate Bureau created.

There is hereby created a Bureau to be known as the "North Carolina Rate Bureau," with the following objects and functions:

(1) To assume the functions formerly performed by the North Carolina Fire Insurance Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, with regard to the promulgation of rates, for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for theft of and physical damage to private passenger (nonfleet) motor vehicles as the same are defined under Article 13C of this Chapter; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith except for insurance excluded from the Bureau's jurisdiction in G.S. 58-124.17(3).

(6) The Bureau shall maintain and furnish to the Commissioner on an annual basis the statistics on earnings derived by member companies from the investment of unearned premium, loss, and loss expense reserves on nonfleet private passenger motor vehicle insurance policies written in this State. Whenever the Bureau proposes rates under this Article, it shall prepare a separate exhibit for the experience years in question showing the combined earnings realized from the investment of such reserves on policies written in this State. The amount of earnings may in an equitable manner be included in the ratemaking formula to arrive at a fair and equitable rate. The Commissioner may require further information as to such earnings and may require calculations of the Bureau bearing on such earnings.

(7) Member companies shall furnish, upon request of any person carrying nonfleet private passenger motor vehicle in-

surance in the State upon whose risk a rate has been promulgated, information as to rating, including the method of calculation. (1977, c. 828, s. 6; 1981, c. 888, ss. 1-3; 1983, c. 416, s. 5; 1985 (Reg. Sess., 1986), c. 1027, s. 5.1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. —

The 1983 amendment, effective June 2, 1983, substituted "North Carolina Fire Insurance Rating Bureau" for "North Carolina Rating Bureau" near the beginning of subdivision (1).

The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, added subdivisions (6) and (7).

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

CASE NOTES

Scope of Commissioner's Authority. — The authority of the Commissioner to review, approve, modify, or disapprove insurance rates promulgated by the rate bureau is limited to that authority granted by the General Assembly. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

The commissioner did not have the statutory authority to withhold approval of an 11.7% rate increase for farmowner insurance coverages subject to the rate bureau's jurisdiction on the condition that the insurance service office file for a rate decrease for farmowner insurance coverages not subject to the rate bureau's jurisdiction. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Cited in Doud v. K & G Janitorial Servs., 69 N.C. App. 205, 316 S.E.2d 664 (1984).

§ 58-124.18. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses.

(b) Each member of the Bureau writing any one or more of the above lines of insurance in North Carolina shall, as a requisite thereto, be represented in the Bureau and shall be entitled to one representative and one vote in the administration of the affairs of the Bureau. They shall, upon organization, elect a governing committee which governing committee shall be composed of equal representation by stock and nonstock members. The governing committee of the Bureau shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department of Insurance and who are appointed by the Governor to serve at his pleasure.

(1977, c. 828, s. 6; 1981, c. 888, s. 4; 1985 (Reg. Sess., 1986), c. 1027, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. —

The 1985 (Regular Session, 1986) amendment, effective July 16, 1986, added the last sentence of subsection (b).

Legal Periodicals. — For article analyzing the scope of the North Carolina

Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Cited in Doud v. K & G Janitorial Servs., 69 N.C. App. 205, 316 S.E.2d 664 (1984).

§ 58-124.19. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

(3) In the case of fire insurance rates, as are subject to the rate-making authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which such experience is available. In the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner.

(1977, c. 828, s. 6; 1979, c. 824, s. 1; 1981, c. 521, s. 5; c. 790; 1987, c. 632, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 632, s. 2 provides that on or before October 1, 1988, the North Carolina Rate Bureau shall file rating or statistical plans to comply with the act.

Effect of Amendments. —

The 1987 amendment, effective July 17, 1987, added the second sentence of subdivision (3).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate- making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Subdivision (1) of this section applies only to insurance coverages subject to the rate bureau's jurisdiction. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

"Inadequate" and "Excessive" Rates. —

In accord with main volume. See State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Income from Invested Capital, etc.—

The commissioner had to consider evidence tending to show that the insurance department's expert witness based part of his calculations on investment income from capital and surplus, because investment income from these sources may not be considered in insurance rate making. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

The commissioner was not required to approve rates which provided a positive underwriting profit as a matter of law, but was only required to give "due consideration" to this criteria. Consequently, the commissioner properly ordered a rate level that produced an underwriting loss while providing for an overall adequate profit. State ex rel. Commissioner of Ins. v.

North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

The commissioner was not required to approve an underwriting profit greater than that requested by the rate bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

The commissioner's order of a five percent "excess multiplier" (i.e., computation providing premium against catastrophic losses) was based on evidence that was not material or substantial, that was fact speculation, and was rejected by the court. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Applied in Unigard Mut. Ins. Co. v. Ingram, 71 N.C. App. 725, 323 S.E.2d 442 (1984).

§ 58-124.20. Filing rates, plans with Commissioner; public inspection of filings.

(a) The Bureau shall file with the Commissioner copies of the rates, classification plans, rating plans and rating systems used by its members. Each rate filing shall become effective on the date specified in the filing, but not earlier than 105 days from the date the filing is received by the Commissioner: Provided that (1) rate filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the Commissioner; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau.

(d) With respect to the filing of rates for nonfleet private passenger motor vehicle insurance, the Bureau shall, on or before July 1 of each year, or later with the approval of the Commissioner, file with the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and any proposed adjustments in the rates for all member companies of the Bureau. The filing shall include, where deemed by the Commissioner to be necessary for proper review, the data specified in subsections (c), (e), (g) and (h) of this section. Any filing that does not contain the data required by this subsection may be returned to the Bureau and not be deemed a proper filing. Provided, however, that if the Commissioner concludes that a filing does not constitute a proper filing he shall promptly notify the Bureau in writing to that effect, which notification shall state in reasonable detail the basis of the Commissioner's conclusion. The Bureau shall then have a reasonable time to remedy the defects so specified. An otherwise defective filing thus remedied shall be deemed to be a proper and timely filing, except that all periods of time specified in this Article will run from the date the Commissioner receives additional or amended documents necessary to remedy all material defects in the original filing.

(g) The following information must be included in policy form, rule, and rate filings under this Article and under Article 25A of this Chapter:

(1) A detailed list of the rates, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, and rates, including the effect of each change.

(h) Except for filings made under G.S. 58-124.23, all policy form, rule, and rate filings under this Article and Article 25A of this Chapter that are based on statistical data must be accompanied by the following properly identified information:

(1) North Carolina earned premiums at the actual and current rate level; losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ratio anticipated at the time the rates were promulgated for the experience period;
(2) Credibility factor development and application;
(3) Loss development factor derivation and application on both paid and incurred bases and in both numbers and dollars of claims;
(4) Trending factor development and application;
(5) Changes in premium base resulting from rating exposure trends;
(6) Limiting factor development and application;
(7) Overhead expense development and application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees;
(8) Percent rate change;
(9) Final proposed rates;
(10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves;
(11) Identification of applicable statistical plans and programs and a certification of compliance with them;
(12) Investment earnings on capital and surplus;
(13) Level of capital and surplus needed to support premium writings without endangering the solvency of member companies; and
(14) Such other information that may be required by any rule adopted by the Commissioner.

Provided, however, that no filing may be returned or disapproved on the grounds that such information has not been furnished if insurers have not been required to collect such information pursuant to statistical plans or programs or to report such information to the Bureau or to statistical agents, except where the Commissioner has given reasonable prior notice to the insurers to begin collecting and reporting such information, or except when the information is readily available to the insurers.

(i) The Bureau shall file with and at the time of any rate filing all testimony, exhibits, and other information on which the Bureau will rely at the hearing on the rate filing. The Department shall file all testimony, exhibits, and other information on which the Department will rely at the hearing on the rate filing 20 days in advance of the convening date of the hearing. Upon the issuance of a notice of hearing the Commissioner shall hold a meeting of the parties to provide for the scheduling of any additional testimony, including written testimony, exhibits or other information, in response to the notice of hearing and any potential rebuttal testimony, exhibits, or other information. This subsection also applies to rate filings made by the North Carolina Motor Vehicle Reinsurance Facility under Article 25A of this Chapter. (1977, c. 828, s. 6; 1979, c. 824, s. 2;

1981, c. 521, s. 1; 1985, c. 666, s. 3; 1985 (Reg. Sess., 1986), c. 1027, ss. 2, 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1985 (Regular Session, 1986), c. 1027, s. 9, provides: "Notwithstanding the provisions of sections 2 through 5 of this act, the Bureau may make its 1986 rate filing for nonfleet private passenger motor vehicle insurance after July 1, 1986."

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, rewrote the second sentence of subsection (a), which formerly read: "Each filing shall become effective immediately on the date specified therein but not earlier than 90 days from the date such filing is received by the Commissioner."

The 1985 (Regular Session, 1986) amendment, effective July 16, 1986, rewrote subsection (d) and added subsections (g), (h) and (i).

CASE NOTES

The controlling statutes do not require the rate bureau to provide justification of classification changes in the rate filing itself. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

When a revised classification and rate plan change is filed, the last sentence in § 58-30.4 provides that "the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only § 58-124.21(a) speaks to any duty of the Commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the Commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 392, 301 S.E.2d 702, 308 N.C. 548, 304 S.E.2d 242 (1983).

Consideration of Effect of Disapproval. — Where the rate bureau's separate filing requesting to write farmowner policies on a one-year rather than a three-year basis did not note that disapproval of the filing would require increases in premium trends in its farmowner filing upon the separate filing being disapproved, the Commissioner was not required to consider the effect of this disapproval on farmowner insurance rates. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Where the rate bureau's filing specifically requested a rate adjustment for the reclassification of masonry veneer structures, having failed to give the rate bureau notice of the alleged deficiency in supporting data, the Commissioner was precluded from raising the classification change at the hearing and was required to permit a rate adjustment on this basis because of the material and substantial evidence offered by the bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Use of Rate Making Data beyond that Provided by ISO. — Although the rate bureau was not required by statute to base a rate filing on data from all insurance companies comprising its membership, instead of only data from the Insurance Service Office (ISO), there was no error in the Commissioner relying on rate making data beyond that compiled by the ISO. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

§ 58-124.21. Disapproval; hearing, order; adjustment of premium, review of filing.

(a) At any time within 50 days from and after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent he contends such filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. At such hearing the factors specified in G.S. 58-124.19 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which such filing shall no longer be effective. Any order of disapproval under this section must be entered within 105 days of the date the filing is received by the Commissioner: Provided that any order of disapproval under this section with respect to workers' compensation insurance and employers' liability insurance written in connection therewith shall be entered within 120 days of the date the filing is received by the Commissioner.

(b) In the event that no notice of hearing shall be issued within 50 days from the date of any such filing, the filing shall be deemed to be approved. If the Commissioner disapproves such filing pursuant to subsection (a) as not being in compliance with G.S. 58-124.19, he may order an adjustment of the premium to be made with the policyholder either by collection of an additional premium or by refund, if the amount exceeds five dollars ($5.00). The Commissioner may thereafter review any filing in the manner provided; but if so reviewed, no adjustment of any premium on any policy then in force may be ordered.

(c) For workers' compensation insurance and employers' liability insurance written in connection therewith, the period between the date of any filing and the date the Commissioner may give written notice as described in subsection (a) of this section and the period between the date of any filing and the deadline for giving notice of hearing as described in subsection (b) of this section shall be 60 days. (1977, c. 828, s. 6; 1979, c. 824, s. 3; 1985, c. 666, s. 2.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "50 days" for "30 days" in the first sentences of subsections (a) and (b), in the last sentence of subsection (a) substituted "105 days" for "90 days" and "the filing" for "such filing" and added the proviso, and added subsection (c).

Legal Periodicals. —

For article analyzing the scope of the North Carolina Insurance Commissioner's rate- making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Unlawful Delegation of Power to Make Final Agency Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the Commissioner made an unlawful delegation of his powers. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 392, 301 S.E.2d 702, 308 N.C. 548, 304 S.E.2d 242 (1983).

When a revised classification and rate plan change is filed, the last sentence in § 58-30.4 provides that "the filing, hearing, disapproval, review and

appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only this section speaks to any duty of the Commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the Commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 392, 301 S.E.2d 702, 308 N.C. 548, 304 S.E.2d 242 (1983).

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Notice of Alleged Deficiency. — Clearly, the Commissioner knew, prior to the notice of hearing, that the rate bureau, based on its filing, had used fire and extended coverage data in calculating its "excess multiplier" (i.e., computation providing premium against catastrophic losses). This section and fundamental fairness required the Commissioner to give notice of the nature and extent of any alleged deficiency in the use of this data. Having failed to give such notice, the Commissioner was prohibited from disapproving the rate bureau's excess multiplier on that basis. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Failure to Give Notice of Alleged Deficiency. — Where the rate bureau's filing specifically requested a rate adjustment for the reclassification of masonry veneer structures, having failed to give the rate bureau notice of alleged deficiency in supporting data, the Commissioner was precluded from raising the classification change at the hearing and was required to permit a rate adjustment on this basis because of the material and substantial evidence offered by the bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Notice Held Adequate. — The Commissioner's notice of hearing specifically providing that investment income had not been considered and that the rate bureau had failed to justify the profit and contingency margin requested was adequate notice of the alleged deficiencies in the bureau's profit determination. The Commissioner was not required to provide in his notice the manner in which profitability would be determined, there being no evidence to indicate that he knew the precise rating methodology that he would propose at the hearing before the notice of hearing was required. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 20, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Consideration of Effect of Disapproval. — Where the rate bureau's separate filing requesting to write farmowner policies on a one-year rather than a three-year basis did not note that disapproval of the filing would require increases in premium trends in its farmowner filing upon the separate filing being disapproved, the Commissioner was not required to consider the effect of this disapproval on farmowner insurance rates. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

Applied in Unigard Mut. Ins. Co. v. Ingram, 71 N.C. App. 725, 323 S.E.2d 442 (1984).

§ 58-124.22. Appeal of Commissioner's order.

(b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and no longer effective by order of the Commissioner issued under G.S. 58-124.21, the members of the Bureau, in accordance with rules and regulations established and adopted by the governing committee, shall have the option to continue to use such rate for the interim period pending judicial review of such order, provided each such member shall place in escrow account the purportedly unfairly discriminatory or excessive portion of the pre-

mium collected during such interim period. Upon a final determination by the Court, the Commissioner shall order the escrowed funds to be distributed appropriately, except that individual refunds that are five dollars ($5.00) or less shall not be required. The court may also require that purportedly excess premiums resulting from an adjustment of premiums ordered pursuant to G.S. 58-124.21(b) be placed in such escrow account pending judicial review. If refunds made to policyholders are ordered under this subsection, the amounts refunded shall bear interest at the rate determined under this subsection. That rate shall be the average of the prime rates of the four largest banking institutions domiciled in this State, plus three percent (3%), as of the effective date of the filing, to be computed by the Commissioner. (1977, c. 828, s. 6; 1979, c. 824, s. 4; 1985 (Reg. Sess., 1986), c. 1027, ss. 3.1, 4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Regular Session, 1986), c. 1027, s. 9, provides: "Notwithstanding the provisions of sections 2 through 5 of this act, the Bureau may make its 1986 rate filing for nonfleet private passenger motor vehicle insurance after July 1, 1986."

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Regular Session, 1986) amendment, effective July 16, 1986, in subsection (b), divided the former first sentence into the present first and second sentences thereof, deleted "and the court" at the end of the present first sentence, inserted "by the Court, the Commissioner" in the present second sentence, and substituted the present next-to-last and last sentences for the former last sentence, which read "The amounts escrowed hereunder shall bear interest at the prime rate as of the date such rates were put into effect."

CASE NOTES

When a revised classification and rate plan change is filed, the last sentence in § 58-30.4 provides that "the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only § 58-124.21(a) speaks to any duty of the Commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the Commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 392, 301 S.E.2d 702, 308 N.C. 548, 304 S.E.2d 242 (1983).

Applied in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124 (1985).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

§ 58-124.23. Deviations.

(a) No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. However, an insurer may deviate from the rates promulgated by the Bureau provided the insurer has filed the deviation to be applied both with the Bureau and the Commissioner, and provided the said deviation is uniform in its application to all risks in the State of the class to which

such deviation is to apply; and provided such deviation is approved by the Commissioner. The Commissioner shall approve proposed deviations if the same do not render the rates excessive, inadequate or unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to the provisions of this subsection. The deviation may be terminated only if the deviation will have been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination.

(c) Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications.

(d) Notwithstanding any other provision of law prohibiting insurance rate differentials based on age, with respect to nonfleet private passenger motor vehicle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates for insureds who are 55 years of age or older. (1977, c. 828, s. 6; 1983, c. 162, ss. 1, 2; 1985, c. 666, s. 1; 1987, c. 869, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1987, c. 869, s. 19 contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective Apr. 11, 1983, deleted the former last sentence of subsection (a), which read "Those portions of this section providing for deviations shall not apply to workers' compensation and employers' liability insurance written in connection therewith," and added subsection (c).

The 1985 amendment, effective July 10, 1985, substituted the present fourth and fifth sentences of subsection (a) for the former fourth and fifth sentences thereof, which read: "If approved the deviation shall remain in force for a period of one year from the date of approval by the Commissioner. Such deviation may be renewed annually subject to all of the foregoing provisions."

The 1987 amendment, effective August 14, 1987, added subsection (d).

Legal Periodicals. — For article, "North Carolina's Cautious Approach Toward the Imposition of Extracontract Liability on Insurers for Bad Faith," see 21 Wake Forest L. Rev. 957 (1986).

CASE NOTES

Section 75-5 is concerned with protecting competitors from predatory business practices, including the fixing of unreasonably low prices with the purpose of lessening competition. On the other hand, § 58-124.23(b) is concerned with protecting the insurance consumer from excessive rates. In responding to deviations from approved rates, the Commissioner makes no attempt to determine whether the rates are being charged with anticompetitive purpose or effect. His determination is restricted solely to seeing that the rates do not exceed the approved ceiling. Phillips v. Integon Corp., 70 N.C. App. 440, 319 S.E.2d 673 (1984).

Applied in Unigard Mut. Ins. Co. v. Ingram, 71 N.C. App. 725, 323 S.E.2d 442 (1984).

§ 58-124.26: Expired.

Editor's Note. — Section 58-124.26 expired under its own terms July 1, 1983.

§ 58-124.27. Notice of coverage or rate change.

Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article except workers' compensation insurance and employers' liability insurance written in connection therewith. (1977, c. 828, s. 6; 1985, c. 666, s. 4.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, added "except workers' compensation insurance and employers' liability insurance written in connection therewith" at the end of this section.

§ 58-124.28. Limitation.

Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting its operations to not more than five counties in this State that are adjacent to the county in which its home office is located, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 6; 1985 (Reg. Sess., 1986), c. 1013, s. 10.1.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted "its operations" for "their operations" and substituted "five counties in this State that are adjacent to the county in which its home office is located" for "three adjacent counties."

§ 58-124.30. Payment of dividends not prohibited or regulated; plan for payment into rating system.

Nothing in this Article will be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. Individual policyholder loss experience may be considered as a factor in determining dividends for workers' compensation insurance and employers' liability insurance written in connection therewith. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers will not be deemed a rating plan or system. (1979, c. 824, s. 6; 1983, c. 374, s. 1.)

Effect of Amendments. — The 1983 amendment, effective May 23, 1983, inserted the present second sentence.

§ 58-124.31. (For effective date see note) Classifications and Safe Driver Incentive Plan for nonfleet private passenger motor vehicle insurance.

(a) The Bureau shall file, subject to review, modification, and promulgation by the Commissioner, such rate classifications, schedules, or rules that the Commissioner deems to be desirable and equitable to classify drivers of nonfleet private passenger motor vehicles for insurance purposes. Subsequently, the Commissioner may require the Bureau to file modifications of the classifications, schedules, or rules. If the Bureau does not file the modifications within a reasonable time, the Commissioner may promulgate the modifications. In promulgating or modifying these classifications, schedules, or rules, the Commissioner may give consideration to the following:

(1) Uses of vehicles, including without limitation to farm use, pleasure use, driving to and from work, and business use;
(2) Principal and occasional operation of vehicles;
(3) Years of driving experience of insureds as licensed drivers;
(4) The characteristics of vehicles; or
(5) Any other factors, not in conflict with any law, deemed by the Commissioner to be appropriate.

(b) The Bureau shall file, subject to review, modification, and promulgation by the Commissioner, a Safe Driver Incentive Plan ("Plan") that adequately and factually distinguishes among various classes of drivers that have safe driving records and various classes of drivers that have a record of chargeable accidents; a record of convictions of major moving traffic violations; a record of convictions of minor moving traffic violations; or a combination thereof; and that provides for premium differentials among those classes of drivers. Subsequently, the Commissioner may require the Bureau to file modifications of the Plan. If the Bureau does not file the modifications within a reasonable time, the Commissioner may promulgate the modifications. The Commissioner is authorized to structure the Plan to provide for surcharges above and discounts below the rate otherwise charged.

(c) The classifications and Plan filed by the Bureau shall be subject to the filing, hearing, modification, approval, disapproval, review, and appeal procedures provided by law; provided that the 105-day disapproval period in G.S. 58-124.21(a) and the 50-day deemer period in G.S. 58-124.21(b) do not apply to filings or modifications made under this section. The classifications or Plan filed by the Bureau and promulgated by the Commissioner shall of itself not be designed to bring about any increase or decrease in the overall rate level.

(d) Whenever any policy loses any safe driver discount provided by the Plan or is surcharged due to an accumulation of points under the Plan, the insurer shall, pursuant to rules adopted by the Commissioner, prior to or simultaneously with the billing for additional premium, inform the named insured of the surcharge or loss of

§ 58-124.31 is set out twice. See notes for effective dates.

discount by mailing to such insured a notice that states the basis for the surcharge or loss of discount, and that advises that upon receipt of a written request from the named insured it will promptly mail to the named insured a statement of the amount of increased premium attributable to the surcharge or loss of discount. The statement of the basis of the surcharge or loss of discount is privileged, and does not constitute grounds for any cause of action for defamation or invasion of privacy against the insurer or its representatives, or against any person who furnishes to the insurer the information upon which the insurer's reasons are based, unless the statement or furnishing of information is made with malice or in bad faith.

(e) Records of convictions for moving traffic violations to be considered under the safe driver plans under G.S. 58-30.4 and this section shall be obtained at least annually from the Division of Motor Vehicles and applied by the Bureau's member companies in accordance with rules to be established by the Bureau.

(f) The Bureau is authorized to establish reasonable rules providing for the exchange of information among its member companies as to chargeable accidents and similar information involving persons to be insured under policies. Neither the Bureau, any employee of the Bureau, nor any company or individual serving on any committee of the Bureau has any liability for defamation or invasion of privacy to any person arising out of the adoption, implementation, or enforcement of any such rule. No insurer or individual requesting, furnishing, or otherwise using any information that such insurer or person reasonably believes to be for purposes authorized by this section has any liability for defamation or invasion of privacy to any person on account of any such requesting, furnishing, or use. The immunity provided by this subsection does not apply to any acts made with malice or in bad faith.

(g) If an applicant for the issuance or renewal of a nonfleet private passenger motor vehicle insurance policy knowingly makes a material misrepresentation of the years of driving experience or the driving record of any named insured or of any other operator who resides in the same household and who customarily operates a motor vehicle to be insured under the policy, the insurer may:

(1) Cancel or refuse to renew the policy;

(2) Surcharge the policy in accordance with rules to be adopted by the Bureau and approved by the Commissioner; or

(3) Recover from the applicant the appropriate amount of premium or surcharge that would have been collected by the insurer had the applicant furnished the correct information. (1985 (Reg. Sess., 1986), c. 1027, s. 1; 1987, c. 864, ss. 28, 33.)

Section Set Out Twice. — The section above is effective until the amendment by Session Laws 1987, c. 869, s. 9 becomes effective. For this section as amended by c. 869, s. 9, see the following section, also numbered 58-124.31.

Editor's Note. — Session Laws 1985 (Regular Session, 1986), c. 1027, s. 58, makes this section effective July 16, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — Session Laws 1987, c. 864, s. 28, effective August 14, 1987, added the last sentence of subsection (c).

Session Laws 1987, c. 864, s. 33, effective retroactively on July 16, 1986, added the proviso at the end of the first sentence of subsection (c).

§ 58-124.31 is set out twice. See notes for effective dates.

§ 58-124.31. (For effective date see note) Classifications and Safe Driver Incentive Plan for nonfleet private passenger motor vehicle insurance.

(a) The Bureau shall file, subject to review, modification, and promulgation by the Commissioner, such rate classifications, schedules, or rules that the Commissioner deems to be desirable and equitable to classify drivers of nonfleet private passenger motor vehicles for insurance purposes. Subsequently, the Commissioner may require the Bureau to file modifications of the classifications, schedules, or rules. If the Bureau does not file the modifications within a reasonable time, the Commissioner may promulgate the modifications. In promulgating or modifying these classifications, schedules, or rules, the Commissioner may give consideration to the following:

(1) Uses of vehicles, including without limitation to farm use, pleasure use, driving to and from work, and business use;
(2) Principal and occasional operation of vehicles;
(3) Years of driving experience of insureds as licensed drivers;
(4) The characteristics of vehicles; or
(5) Any other factors, not in conflict with any law, deemed by the Commissioner to be appropriate.

(b) The Bureau shall file, subject to review, modification, and promulgation by the Commissioner, a Safe Driver Incentive Plan ("Plan") that adequately and factually distinguishes among various classes of drivers that have safe driving records and various classes of drivers that have a record of at-fault accidents; a record of convictions of major moving traffic violations; a record of convictions of minor moving traffic violations; or a combination thereof; and that provides for premium differentials among those classes of drivers. Subsequently, the Commissioner may require the Bureau to file modifications of the Plan. If the Bureau does not file the modifications within a reasonable time, the Commissioner may promulgate the modifications. The Commissioner is authorized to structure the Plan to provide for surcharges above and discounts below the rate otherwise charged.

As used in this section, the term "conviction" includes a determination that a person is responsible for an infraction as provided in Article 66 of Chapter 15A of the General Statutes.

(c) The classifications and Plan filed by the Bureau shall be subject to the filing, hearing, modification, approval, disapproval, review, and appeal procedures provided by law; provided that the 105-day disapproval period in G.S. 58-124.21(a) and the 50-day deemer period in G.S. 58-124.21(b) do not apply to filings or modifications made under this section. The classifications or Plan filed by the Bureau and promulgated by the Commissioner shall of itself not be designed to bring about any increase or decrease in the overall rate level.

(d) Whenever any policy loses any safe driver discount provided by the Plan or is surcharged due to an accumulation of points under the Plan, the insurer shall, pursuant to rules adopted by the Commissioner, prior to or simultaneously with the billing for additional premium, inform the named insured of the surcharge or loss of discount by mailing to such insured a notice that states the basis

§ 58-124.31 is set out twice. See notes for effective dates.

for the surcharge or loss of discount, and that advises that upon receipt of a written request from the named insured it will promptly mail to the named insured a statement of the amount of increased premium attributable to the surcharge or loss of discount. The statement of the basis of the surcharge or loss of discount is privileged, and does not constitute grounds for any cause of action for defamation or invasion of privacy against the insurer or its representatives, or against any person who furnishes to the insurer the information upon which the insurer's reasons are based, unless the statement or furnishing of information is made with malice or in bad faith.

(e) Records of convictions for moving traffic violations to be considered under the safe driver plans under G.S. 58-30.4 and this section shall be obtained at least annually from the Division of Motor Vehicles and applied by the Bureau's member companies in accordance with rules to be established by the Bureau.

(f) The Bureau is authorized to establish reasonable rules providing for the exchange of information among its member companies as to chargeable accidents and similar information involving persons to be insured under policies. Neither the Bureau, any employee of the Bureau, nor any company or individual serving on any committee of the Bureau has any liability for defamation or invasion of privacy to any person arising out of the adoption, implementation, or enforcement of any such rule. No insurer or individual requesting, furnishing, or otherwise using any information that such insurer or person reasonably believes to be for purposes authorized by this section has any liability for defamation or invasion of privacy to any person on account of any such requesting, furnishing, or use. The immunity provided by this subsection does not apply to any acts made with malice or in bad faith.

(g) If an applicant for the issuance or renewal of a nonfleet private passenger motor vehicle insurance policy knowingly makes a material misrepresentation of the years of driving experience or the driving record of any named insured or of any other operator who resides in the same household and who customarily operates a motor vehicle to be insured under the policy, the insurer may:

(1) Cancel or refuse to renew the policy;

(2) Surcharge the policy in accordance with rules to be adopted by the Bureau and approved by the Commissioner; or

(3) Recover from the applicant the appropriate amount of premium or surcharge that would have been collected by the insurer had the applicant furnished the correct information.

(h) If an insured disputes his insurer's determination that the operator of an insured vehicle was at fault in an accident, such dispute shall be resolved pursuant to G.S. 58-124.17(2), unless there has been an adjudication or admission of negligence of such operator.

(i) As used in this section, "conviction" means a conviction as defined in G.S. 20-279.1 and means an infraction as defined in G.S. 14-3.1.

(j) Subclassification plan surcharges shall be applied to a policy for a period of not less nor more than three policy years.

(k) The subclassification plan may provide for premium surcharges for insureds having less than three years' driving experience as licensed drivers.

§ 58-124.31 is set out twice. See notes for effective dates.

(l) Except as provided in G.S. 58-124.23(d), no classification or subclassification plan for nonfleet private passenger motor vehicle insurance shall be based, in whole or in part, directly or indirectly, upon the age or gender of insureds. (1985 (Reg. Sess., 1986), c. 1027, s. 1; 1987, c. 864, ss. 28, 33; c. 869, s. 9.)

Section Set Out Twice. — The section above is effective six months after approval of a revised subclassification plan by the Commissioner of Insurance. See the Editor's Note below. For this section as in effect until that time, see the preceding section, also numbered 58-124.31.

Editor's Note. —

Session Laws 1987, c. 869, s. 20 makes the amendment by s. 9 of the act effective six months after the date the revised subclassification plan is approved by the Commissioner of Insurance as provided in s. 17 of the act.

Session Laws 1987, c. 869, s. 17 provides: "The North Carolina Rate Bureau shall file in accordance with G.S. 58-124.31 a revised subclassification plan to reflect the provisions of this act. The Bureau shall make the filing no later than February 1, 1988, and such plan shall become effective six months after the date the plan is approved by the Commissioner. Such revised plan shall apply only to new and renewal nonfleet private passenger motor vehicle insurance policies written on and after the effective date of the plan. With respect to any moving traffic violations that occur before the effective date of the plan, the surcharge levided under G.S. 58-248.34(f) shall be determined by the revised subclassification plan. With respect to at fault accidents that occur before the effective date of the plan, the premium surcharges under the plan shall be determined by the subclassification plan in effect at the time such at fault accidents occur."

Session Laws 1987, c. 869, s. 19 contains a severability clause.

Effect of Amendments. — Session Laws 1987, c. 864, s. 28, effective August 14, 1987, added the last sentence of subsection (c).

Session Laws 1987, c. 864, s. 33, effective retroactively on July 16, 1986, added the proviso at the end of the first sentence of subsection (c).

Session Laws 1987, c. 869, s. 9 substituted "at-fault" for "chargeable" in the first sentence in subsection (b) and added subsections (h) through (l). For effective date of this amendment, see the Editor's Note above.

§ 58-124.32. Rate filings and hearings for motor vehicle insurance.

(a) With respect to nonfleet private passenger motor vehicle insurance, except as provided in G.S. 58-124.22, a filing made by the Bureau under G.S. 58-124.20(d) is not effective until approved by the Commissioner or unless 60 days have elapsed since the making of a proper filing under that subsection and the Commissioner has not called for a hearing on the filing. If the Commissioner calls for a hearing, he must give written notice to the Bureau, specify in the notice in what respect the filing fails to comply with this Article, and fix a date for the hearing that is not less than 30 days from the date the notice is mailed.

(b) At least 15 days before the date set for the convening of the hearing the respective staffs and consultants of the Bureau and Commissioner shall meet at a prehearing conference to review the filing and discuss any points of disagreement that are likely to be in issue at the hearing. At the prehearing conference, the parties shall list the names of potential witnesses and, where possible, stipulate to their qualifications as expert witnesses, stipulate to the sequence of appearances of witnesses, and stipulate to the relevance of proposed exhibits to be offered by the parties. Minutes of the prehearing conference shall be made and reduced to writing and become

§ 58-124.31 is set out twice. See notes for effective dates.

part of the hearing record. Any agreements reached as to preliminary matters shall be set forth in writing and consented to by the Bureau and the Commissioner. The purpose of this subsection is to avoid unnecessary delay in the rate hearings.

(c) Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates are not excessive, inadequate, or unfairly discriminatory is on the Bureau. The Commissioner may disregard at the hearing any exhibits, judgments, or conclusions offered as evidence by the Bureau that were developed by or available to or could reasonably have been obtained or developed by the Bureau at or before the time the Bureau made its proper filing and which exhibits, judgments, or conclusions were not included and supported in the filing; unless the evidence is offered in response to inquiries made at the hearing by the Department, the notice of hearing, or as rebuttal to the Department's evidence. If relevant data becomes available after the filing has been properly made, the Commissioner may consider such data as evidence in the hearing. The order of presenting evidence shall be (1) by the Bureau; (2) by the Department; (3) any rebuttal evidence by the Bureau regarding the Department's evidence; and (4) any rebuttal evidence by the Department regarding the Bureau's rebuttal evidence. Neither the Bureau nor the Department shall present repetitious testimony or evidence relating to the same issues. The Bureau shall reimburse the Department for all reasonable costs incurred by the Department in retaining outside actuarial, economic, and legal consultants or counsel, and court reporting services, for the review of rate filings, in conducting hearings, and up to the time the Commissioner issues an order approving or disapproving the filing.

(d) If the Commissioner finds that a filing complies with the provisions of this Article, either after the hearing or at any other time after the filing has been properly made, he may issue an order approving the filing. If the Commissioner after the hearing finds that the filing does not comply with the provisions of this Article, he may issue an order disapproving the filing, determining in what respect the filing is improper, and specifying the appropriate rate level or levels that may be used by the members of the Bureau instead of the rate level or levels proposed by the Bureau filing, unless there has not been data admitted into evidence in the hearing that is sufficiently credible for arriving at the appropriate rate level or levels. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved. The Commissioner may thereafter review any filing in the manner provided; but if so reviewed, no adjustment of any premium on any policy then in force may be ordered.

(e) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical agency designated by the Commissioner, any rating or advisory organization, the Bureau, the North Carolina Motor Vehicle Reinsurance Facility, or any insurer, which information affects the rates, rating plans, classifications, or policy forms subject to this Article or Article 25A of this chapter. (1985 (Reg. Sess., 1986), c. 1027, s. 5; 1987, c. 864, s. 65.)

Editor's Note. — Session Laws 1985 (Regular Session, 1986), c. 1027, s. 58, makes this section effective July 16, 1986.

Session Laws 1985 (Regular Session, 1986), c. 1027, s. 9, provides: "Notwithstanding the provisions of sections 2 through 5 of this act, the Bureau may make its 1986 rate filing for nonfleet private passenger motor vehicle insurance after July 1, 1986."

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added the last sentence of subsection (d).

§ 58-124.33. (For effective date see note) At-fault accidents and certain moving traffic violations under the Safe Driver Incentive Plan.

(a) The subclassification plan promulgated pursuant to G.S. 58-124.31(b) may provide for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of two thousand dollars ($2,000) or more. An "intermediate accident" is an at-fault accident that results in only property damage of more than one thousand dollars ($1,000) but less than two thousand dollars ($2,000). A "minor accident" is an at-fault accident that results in only property damage of one thousand dollars ($1,000) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge.

(b) The subclassification plan promulgated pursuant to G.S. 58-124.31(b) shall provide that with respect to a conviction for any moving traffic violation that is not listed in subsection (c) of this section, there shall be no Motor Vehicle Reinsurance Facility recoupment surcharge pursuant to G.S. 58-248.34(f) unless (i) the vehicle owner, principal operator, or any licensed operator in the owner's household has a driving record consisting of one or more convictions for a moving traffic violation, other than the conviction for the exempt violation, or one or more at-fault accidents during the three-year period immediately preceding the date of the application for a policy or the date of the preparation of the renewal of a policy, or (ii) the moving traffic violation for which the operator has been convicted occurred at the time of an accident for which he was at fault. Nothing in this section affects any provisions in the subclassification plan for premium surcharges for moving traffic violations or at-fault accidents.

(c) The subclassification plan promulgated pursuant to G.S. 58-124.31(b) shall provide for facility recoupment surcharges pursuant to G.S. 58-248.34(f) and G.S. 58-248.41, in addition to premium surcharges, for convictions for the following moving traffic violations:

General Statute	Description of Offense
20-12.1	Being impaired while accompanying a permittee who is learning to drive
20-28	Driving while license is suspended or revoked

§ 58-124.33 has a delayed effective date. See notes for date.

General Statute	Description of Offense
20-138.1	Driving a vehicle while impaired
20-138.3	Driving by provisional licensee after consuming alcohol or drugs
20-140(a)	Driving carelessly and heedlessly in willful or wanton disregard of the rights of others
20-140(b)	Driving without due caution in a manner so as to endanger other people or property
29-141(a)	Only driving at least 11 miles per hour over the posted speed limit or driving in excess of the speed limit established by the State Department of Transportation under G.S. 20-141(d)(2)
20-141(j)	Driving in excess of 55 mph and at least 15 mph over legal limit, while fleeing or attempting to elude arrest by a law enforcement officer
20-141(j1)	Driving more than 15 mph over legal limit
20-141.1	Speeding in a school zone
20-141.3(a)	Engaging in prearranged speed competition with another motor vehicle
20-141.3(b)	Willfully engaging in speed competition with another motor vehicle (not prearranged)
20-141.3(c)	Allowing or authorizing others to use one's motor vehicle in prearranged speed competition or placing or receiving a bet or wager on a prearranged speed competition
20-141.4(a1)	Death by vehicle (unintentionally causing death of another while engaged in impaired driving)
20-141.4(a2)	Death by vehicle (unintentionally causing death of another as a result of a violation of motor vehicle law intended to regulate traffic or used to control operation of a vehicle)
20-166(a)	Failure to stop by driver who knew or should have known he was involved in accident and that accident caused death or injury to any person
20-166(c)	Failure of driver involved in accident causing property dam-

§ 58-124.33 has a delayed effective date. See notes for date.

General Statute	Description of Offense
	age or personal injury or death (if driver did not know of injury or death) to stop at scene of accident
20-175.2	Failure to yield right-of-way to blind person at crossings, intersections, and traffic control signal points
20-217	Failure to stop and remain stopped when approaching a stopped school bus engaged in receiving or discharging passengers and while bus has mechanical stop signal displayed
14-18	Voluntary manslaughter
14-18	Involuntary manslaughter

(d) There shall be no Facility recoupment surcharge under G.S. 58-248.34(f) for accidents or conviction for speeding violations occurring when operating a firefighting, rescue squad, or law enforcement vehicle in response to an emergency if the operator of the vehicle at the time of the accident or speeding violation was a paid or volunteer member of any fire department, rescue squad, or any law enforcement agency. This exception does not include an accident or speeding violation occurring after the vehicle ceases to be used in response to such emergency.

(e) There shall be no Facility recoupment surcharge under G.S. 58-248.34(f) for any accident involving only damage to the operator's vehicle or to the property of another for which full payment or compensation has been made by the operator at fault; and when the motor vehicle insurer of the operator has not made any payment under any kind of insurance policy for such property damage to or on behalf of such operator. Notwithstanding the provision of this subsection, an insured still has a duty to report such accident to his insurer and to law enforcement authorities if such duty is required by the insurance contract or by law.

(f) The subclassification plan shall provide that with respect to a conviction for a "violation of speeding 10 miles per hour or less over the speed limit" there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations, except for a prayer for judgment continued for any moving traffic violation, during the three years immediately preceding the date of application or the preparation of the renewal. The subclassification plan shall also provide that with respect to a prayer for judgment continued for any moving traffic violation, there shall be no premium surcharge nor any assessment of points unless the vehicle owner, principal operator, or any licensed operator in the owner's household has a driving record consisting of a prayer or prayers for judgment continued for any moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal. For the purpose of this subsection, a "prayer for judgment continued" means a determination of guilt by a jury or a court though no sentence has been imposed. For the purpose of this subsection, a "violation of speeding 10 miles per hour or less over the speed limit" does not include the offense of

§ 58-124.33 has a delayed effective date. See notes for date.

speeding in a school zone in excess of the posted school zone speed limit nor any offense of speeding in excess of 65 miles per hour.

(f1) The subclassification plan shall provide that in the event an insured is at fault in an accident and is convicted of a moving traffic violation in connection with the accident, only the higher plan premium surcharge between the accident and the conviction shall be assessed on the policy.

(g) As used in this section "conviction" means a conviction as defined in G.S. 20-279.1 and means an infraction as defined in G.S. 14-3.1. (1987, c. 869, s. 6.)

Editor's Note. — Session Laws 1987, c. 869, s. 20 makes this section effective six months after the date the revised subclassification plan is approved by the Commissioner of Insurance as provided in s. 17 of the act.

Session Laws 1987, c. 869, s. 17 provides: "The North Carolina Rate Bureau shall file in accordance with G.S. 58-124.31 a revised subclassification plan to reflect the provisions of this act. The Bureau shall make the filing no later than February 1, 1988, and such plan shall become effective six months after the date the plan is approved by the Commissioner. Such revised plan shall apply only to new and renewal nonfleet private passenger motor vehicle insurance policies written on and after the effective date of the plan. With respect to any moving traffic violations that occur before the effective date of the plan, the surcharge levied under G.S. 58-248.34(f) shall be determined by the revised subclassification plan. With respect to at fault accidents that occur before the effective date of the plan, the premium surcharges under the plan shall be determined by the subclassification plan in effect at the time such at fault accidents occur."

Session Laws 1987, c. 869, s. 19 contains a severability clause.

Article 13C.

Regulation of Insurance Rates.

§ 58-131.34. Purposes.

CASE NOTES

Scope of Commissioner's Authority. — The authority of the Commissioner to review, approve, modify, or disapprove insurance rates promulgated by the rate bureau is limited to that authority granted by the General Assembly. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

§ 58-131.35. Definitions.

As used in this Article:

(8), (9) Repealed by Session Laws 1987, c. 864, s. 66, effective August 14, 1987. (1977, c. 828, s. 2; 1987, c. 864, s. 66.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, deleted subdivisions (8) and (9).

§ 58-124.33 has a delayed effective date. See notes for date.

§ 58-131.35A. Other definitions.

As used in this Article and in Articles 12B and 25A of this Chapter:

(1) "Private passenger motor vehicle" means:
   a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
   b. A motor vehicle with a pick-up body, a delivery sedan or a panel truck that is owned by an individual or by husband and wife or individuals who are residents of the same household and that is not customarily used in the occupation, profession, or business of the insured other than farming or ranching. Such vehicles owned by a family farm copartnership or corporation shall be considered owned by an individual for purposes of this Article; or
   c. A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes.

(2) "Nonfleet" motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or less motor vehicles owned or hired under a long-term contract by the policy named insured. (1987, c. 864, s. 67.)

Editor's Note. — Session Laws 1987, c. 864, s. 93 makes this section effective upon ratification. The act was ratified August 14, 1987.

§ 58-131.36. Scope of application.

The provisions of this Article shall apply to all insurance on risks or on operations in this State, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-131.45;
(2) Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State;
(3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
(4) Accident, health, or life insurance;
(5) Annuities;
(6) Repealed by Session Laws 1985, c. 666, s. 43, effective September 1, 1985.
(7) Mortgage guaranty insurance;
(8) Workers' compensation and employers' liability insurance written in connection therewith;
(9) For private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages

written in connection with the sale of such liability insurance;

(10) Theft of or physical damage to private passenger (nonfleet) motor vehicles; and

(11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance. Provided, however, that this Article shall apply to insurance against loss to farm buildings (other than farm dwellings and their appurtenant structures); farm personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles unless insured under policies covering nonfleet private passenger motor vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations. (1977, c. 828, s. 2; 1979, c. 714, s. 2; 1981, c. 888, s. 5; 1985, c. 666, s. 43.)

Effect of Amendments. — The 1985 amendment, effective Sept. 1, 1985, deleted subdivision (6), which read: "Title insurance."

CASE NOTES

The Commissioner did not have the statutory authority to withhold approval of an 11.7% rate increase for farmowner insurance coverages subject to the rate bureau's jurisdiction on the condition that the insurance service office file for a rate decrease for farmowner insurance coverages not subject to the rate bureau's jurisdiction. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 75 N.C. App. 201, 331 S.E.2d 124, cert. denied, 314 N.C. 547, 335 S.E.2d 319 (1985).

§ 58-131.37. Rate standards.

(a) In order to serve the public interest, rates shall not be excessive, inadequate, or unfairly discriminatory.

(b), (c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 10, effective September 1, 1986.

(d) No rate is inadequate unless the rate is unreasonably low for the insurance provided and the use or continued use of the rate by the insurer has had or will have the effect of:

(1) Endangering the solvency of the insurer; or

(2) Destroying competition; or

(3) Creating a monopoly; or

(4) Violating actuarial principles, practices, or soundness.

(1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, ss. 9.1, 10, 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Regular Session, 1986) amendment, effective September 1, 1986, inserted "In order to serve the public interest" at the beginning of subsection (a), deleted subsections (b) and (c), relating to excessive rates, and rewrote subsection (d).

CASE NOTES

Stated in Mackey v. Nationwide Ins. Cos., 724 F.2d 419 (4th Cir. 1984).

§ 58-131.38. Rating methods.

In determining whether rates comply with the standards under GS 58-131.37, the following criteria shall be applied:

(1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; Provided, however, that regional or countrywide expense or loss experience and other regional or countrywide data may be considered only when credible North Carolina expense or loss experience or other data is not available.

(1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 16.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Regular Session, 1986) amendment, effective September 1, 1986, rewrote the proviso at the end of subdivision (1).

§ 58-131.39. Filing of rates and supporting data.

(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted insurer and every licensed rating organization, which has been designated by any insurer for the filing of rates under G.S. 58-131.41, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective.

(d) This section and G.S. 58-480 shall be construed in pari materia. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 17; 1987, c. 441, s. 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Regular Session, 1986) amendment, effective September 1, 1986, added subsection (d).

The 1987 amendment, effective June 22, 1987, substituted "with the exception of inland marine insurance that is not written according to manual rates

and rating plans, every admitted insurer" for "Except as to inland marine risks which by general custom of the business are not written according to manual rates and rating plans, every admitted insurer" at the beginning of subsection (a).

§ 58-131.42. Disapproval of rates; interim use of rates.

(a) If, after a hearing, the Commissioner disapproves a rate, he must issue an order specifying in what respects the rate fails to meet the requirements of G.S. 58-131.37. If the Commissioner finds a rate to be excessive, he shall order the excess premium, plus interest at a rate determined in the same manner as in G.S. 58-124.22(b) as of the dates such rates were effective for policyholders, to be refunded to those policyholders who have paid the excess premium. If the Commissioner finds a rate to be unfairly discriminatory, he shall order an appropriate adjustment for policyholders who have paid the unfairly discriminatory premium. The order must be issued within 30 business days after the close of the hearing.

(c) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical agency designated by the Commissioner, any rating or advisory organization, or any insurer, which information will affect the rates, rating plans, classifications, or policy forms subject to this Article. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, ss. 12, 12.1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Regular Session, 1986) amendment, effective September 1, 1986, rewrote subsection (a) and added subsection (c).

§ 58-131.44. Advisory organizations.

(a) No advisory organization shall conduct its operations in this State unless and until it has obtained a license from and filed with the Commissioner:

(1) A copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws, or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers; and

(3) The name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.

(1977, c. 828, s. 2; 1987, c. 441, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 47 provides that "G.S. 58-131.44(a) is amended by substituting the words, 'obtain a license from and' between the words 'shall' and 'file'." The words "shall" and "file" do not occur together in subsection (a). Therefore, at the direction of the Revisor of Statutes, this amendment has not been effectuated.

Session Laws 1985 (Reg. Sess., 1986),

c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, inserted "obtained a license from and" in the introductory language of subsection (a).

§ 58-131.45. Joint underwriting and joint reinsurance organizations.

(a) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization, or by standing agreement among the members thereof, shall obtain a license from and file with the Commissioner:

(1) A copy of its constitution, articles of incorporation, agreement, or association, and bylaws;

(2) A list of its members; and

(3) The name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.

(1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 48; 1987, c. 441, s. 12; c. 864, s. 71.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 48 provided that "G.S. 58-131.45(a) was amended by inserting the words, 'obtain a license from and' between the words 'file' and 'with'." However, the apparent intent of the act was to insert the quoted language between the words "shall" and "file." Subsequently, the 1987 amendments inserted the language in its present position.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, inserted "obtain a license from and" in subsection (a). See the Editor's note above.

Session Laws 1987, c. 441, s. 12, effective June 22, 1987, inserted "obtained a license from and" in the introductory paragraph of subsection (a).

Session Laws 1987, c. 864, s. 71, effective August 14, 1987, amended Session Laws 1987, c. 441, s. 12 by substituting "obtain" for "obtained."

§ 58-131.46. Insurers authorized to act in concert.

Subject to and in compliance with the provisions of this Chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, the creation, administration, or termination of a market assistance program, or carrying on of research. (1977, c. 828, s. 2; 1986, Ex. Sess., c. 7, s. 9.)

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respec-

tively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Section 12 of Session Laws 1986, Extra Session, c. 7 is a severability clause.

Effect of Amendments. — The 1986 Extra Session amendment, effective February 18, 1986, inserted "the creation, administration, or termination of a market assistance program" near the end of this section.

§ 58-131.48. Agreements to adhere.

No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a market assistance program or of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section does not apply to mandatory or voluntary risk sharing plans established under Article 37 of this Chapter or apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-131.52. Provided, however, that members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, consistently or intermittently use the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement. (1977, c. 828, s. 2; 1986, Ex. Sess., c. 7, ss. 10, 11.)

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Section 12 of Session Laws 1986, Extra Session, c. 7 is a severability clause.

Effect of Amendments. — The 1986 Extra Session amendment, effective February 18, 1986, inserted "a market assistance program or of" following "management or is a member of" in the first sentence and substituted "This section does not apply to mandatory or voluntary risk sharing plans established under Article 37 of this Chapter or" for "This section shall not apply to" at the beginning of the second sentence.

§ 58-131.53. Request for review of rate, rating plan, rating system or underwriting rule.

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-9.2 or 58-9.7.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15, effective September 1, 1986. (1977, c. 828, s. 2; 1985, c. 733, s. 3; 1985 (Reg. Sess., 1986), c. 1027, s. 15; 1987, c. 441, s. 13.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 12, 1985, added "notice of termination of agency contract to the Commissioner" in the catchline, designated the first paragraph as subsection (a), and added subsection (b).

The 1985 (Reg. Sess., 1986) amendment, effective Sept. 1, 1986, repealed subsection (b) of this section, relating to notice of cancellation of agency contracts.

The 1987 amendment, effective June 22, 1987, substituted "G.S. 58-9.2 or 58-9.7" for "G.S. 58-131.54" at the end of subsection (a).

§ 58-131.55. Suspension of license.

(a) Repealed by Session Laws 1985, c. 666, s. 36, effective July 10, 1985.

(c) No license shall be suspended except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization, and specifying the alleged violation. (1977, c. 828, s. 2; 1985, c. 666, s. 36.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, rewrote the catchline to this section, which formerly read: "Penalties," deleted subsection (a), providing for a five hundred dollar penalty for violation of this Article and a five thousand dollar penalty for willful violation thereof, and substituted "No license shall be suspended" for "No penalty shall be imposed and no license shall be suspended or revoked" at the beginning of subsection (c).

§ 58-131.56: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 15, effective September 1, 1986.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

§ 58-131.59: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 15, effective September 1, 1986.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

§ 58-131.60. Limitation.

Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting its operations to not more than five counties in this State that are adjacent to the county in which its home office is located, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1013, s. 10.1.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted "its operations" for "their operations" and substituted "five counties in this State that are adjacent to the county in which its home office is located" for "three adjacent counties."

§ 58-131.61. Financial disclosure; rate modifications; reporting requirements.

(a) The Commissioner may require each insurer subject to this Article to report, on a form prescribed by the Commissioner, its loss and expense experience, investment income, administrative expenses, and other data that he may require, for kinds of insurance or classes of risks that he designates. These reports are in addition to financial or other statements required by this Chapter.

(b) The Commissioner may designate one or more rating organizations or advisory organizations to gather and compile the experience and data referred to in subsection (a) of this section for their member companies.

(c) Whereas the provisions enacted by the General Assembly in 1986 regarding modifications in North Carolina civil law may have a prospective effect upon the loss experience of insurers subject to this Article, the Commissioner is authorized to review each company's rates by type of insurance that are in effect on and after January 1, 1987, and, when and where appropriate, require modification of such rates.

(d) Each insurer subject to this Article shall record the experience and data referred to in subsection (a) of this section arising from causes of action arising against its insureds on and after January 1, 1987. Such experience and data shall be reported to the Commissioner by March 31, 1988, which report shall be on a form prescribed by the Commissioner reflecting such experience and

data for the one-year period beginning on January 1, 1987. Subsequently, such experience and data shall be reported to the Commissioner by March 31 of each year for each one-year period ending on December 31 of the previous year.

(e) On or before July 1, 1988, and annually thereafter, the Commissioner shall report to the General Assembly the effects, if any, of changes in North Carolina civil law statutes on the experience of insurers subject to this section. (1985 (Reg. Sess., 1986), c. 1027, c. 13.)

Editor's Note. — Session Laws 1985 (Regular Session, 1986), c. 1027, s. 58, makes this section effective September 1, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

§ 58-131.62. Good faith immunity for operation of market assistance programs.

There is no liability on the part of and no cause of action of any nature arises against any director, administrator, or employee of a market assistance program, or the Commissioner or his representatives, for any acts or omissions taken by them in creation or operation of a market assistance program. The immunity established by this section does not extend to willful neglect, malfeasance, bad faith, fraud, or malice that would otherwise make an act or omission actionable. (1985 (Reg. Sess., 1986), c. 1027, s. 28.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 58, makes this section effective March 10, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

§ 58-131.63. CGL extended reporting.

Any policy for commercial general liability coverage wherein the insurer offers, and the insured elects to purchase, an extended reporting period for claims arising during the expiring policy period must provide:

(1) That in the event of a cancellation permitted by G.S. 58-473 or nonrenewal effective under G.S. 58-474, there shall be a 30-day period before the effective date of the cancellation or nonrenewal during which the insured may elect to purchase coverage for the extended reporting period;

(2) That the limit of liability in the policy aggregate for the extended reporting period shall be one hundred percent (100%) of the expiring policy aggregate; and

(3) Within 45 days after the mailing or delivery of the written request of the insured, the insurer shall mail or deliver the following loss information covering a three-year period:

a. Aggregate information on total closed claims, including date and description of occurrence, and any paid losses;

b. Aggregate information on total open claims, including date and description of occurrence, and amounts of any payments;

c. Information on notice of any occurrence, including date and description of occurrence. (1985 (Reg. Sess., 1986), c. 1013, s. 17; c. 1027, s. 29.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 58, makes this section, which was enacted by Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 29, effective September 1, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 17, amends this section, as enacted by Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 29, by rewriting subdivision (3), effective Sept. 1, 1986.

Article 14.

Real Estate Title Insurance Companies.

§ 58-132. Purpose of organization; formation; insuring closing services; premium rates; combined premiums for lenders' coverages.

(a) Companies may be formed in the manner provided in this Article for the purpose of furnishing information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. A company may also insure the proper performance of services necessary to conduct a real estate closing performed by an approved attorney licensed to practice in North Carolina. Provided, however, nothing in this section shall be construed to prohibit or preclude a title insurance company from insuring proper performance by its issuing agents.

(b) Such companies shall be subject to:

(1) The same capital, surplus and investment requirements as govern the formation and operation of domestic stock casualty companies.

(2) The same deposit requirements governing the operation of other state or foreign casualty companies in this State; and

(3) Repealed by Session Laws 1985, c. 666, s. 43, effective September 1, 1985.

(d) The premium rates charged for insuring against loss by reason of encumbrances and defective title and for insuring real estate closing services shall be based on the purchase price of the real estate being conveyed or the loan amount and shall not be established as flat fees. If a title insurer has also issued title insurance protecting a lender or owner against loss by reason of encumbrances and defective title, the insurer shall charge one undivided premium for the combination of the title insurance and the closing services insurance. (1899, c. 54, s. 38; 1901, c. 391, s. 3; Rev., s.

4745; C.S., s. 6395; 1923, c. 71; 1973, c. 128; 1985, c. 666, s. 43; 1987, c. 625, ss. 1-3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Sept. 1, 1985, deleted subdivision (b)(3), which read: "Article 17A of the Insurance Law of this State and G.S. 58-39. Such companies shall not be subject to the Insurance Law of this State except as otherwise provided in this Article."

The 1987 amendment, effective July 16, 1987, rewrote subsection (a), added subsection (d), and added "insuring closing services; premium rates; combined premium for lenders' coverages" at the end of the catchline.

CASE NOTES

Cited in Gardner v. North Carolina State Bar, 316 N.C. 285, 341 S.E.2d 517 (1986).

§ 58-134. Financial statements and licenses required.

Title insurance companies are subject to G.S. 58-21 and 58-22. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The Commissioner of Insurance shall annually license such companies and their agents, and have the same power and authority to visit and examine such corporations as he has in the case of other domestic insurance companies; and the duties and liabilities of such corporations and their agents in reference to such examinations are the same as those of other domestic insurance companies. (1899, c. 54, s. 38; 1901, c. 391, s. 3; Rev., s. 4745; C.S., s. 6397; 1987, c. 625, ss. 4, 5.)

Effect of Amendments. — The 1987 amendment, effective July 16, 1987, rewrote the first two sentences, which read "Every such corporation shall, on or before the thirtieth day of January of each year, file in the office of the Commissioner of Insurance a statement, such as he may require, showing its condition and its affairs for the year ending on the preceding thirty-first day of December, signed and sworn to by its president or its secretary or treasurer and one of its directors. For neglect to file such annual statement or for making a wilfully false statement, it shall be liable to the same penalties imposed upon other insurance companies." In addition, the amendment rewrote the catchline.

§ 58-134.4. Unearned premium reserve on policies issued by foreign or alien title insurance companies.

Every foreign or alien title insurance company licensed to transact title insurance in this State shall reserve and maintain the same reserves as are required of domestic companies under the provisions of G.S. 58-134.3, unless by the laws of the state or country of domicile of such company there is required to be set aside and maintained an unearned premium reserve in at least as great an amount as is required of domestic companies by that section. (1969, c. 897; 1987, c. 864, s. 4.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "G.S. 58-134.3" for "G.S. 58-134.4."

Article 15.

Title Insurance Companies and Land Mortgage Companies Issuing Collateral Loan Certificates.

§ 58-135.1. Prohibition against payment or receipt of title insurance kickbacks, rebates, commissions and other payments.

(b) Any person or entity violating the provisions of this Chapter shall be guilty of a misdemeanor and subject to a fine of not more than five thousand dollars ($5,000), or imprisonment for not more than six months, or both, in the discretion of the court.

(1973, c. 1336, s. 1; 1985, c. 666, s. 24.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in subsection (b).

Article 16.

Reciprocal or Interinsurance Exchanges.

§ 58-143. Reserve fund.

There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty per centum (50%) of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. For the purpose of said reserve, net annual deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements, for expenses. Said sum shall at no time be less than one hundred thousand dollars ($100,000), and if at any time fifty percent (50%) of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency. The liability of the subscribers to make up any such deficiency may be limited by agreement between the subscribers and the attorney-in-fact, if the terms of such agreement and the conditions under which such agreement shall be applicable have been approved by the Commissioner. (1913, c. 183, s. 7; C.S., s. 6403; 1945, c. 386; 1987, c. 864, s. 69.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added the last sentence.

§ 58-146. Punishment for failing to comply with law.

Any attorney or representative who shall, except for the purpose of applying for certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in this Article, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one thousand dollars ($1,000), nor more than five thousand dollars ($5,000). (1913, c. 183, s. 10; C.S., s. 6406; 1985, c. 666, s. 20.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)".

Article 17.

Foreign or Alien Insurance Companies.

§ 58-149. (Effective February 1, 1988) Admitted to do business.

Foreign or alien insurance companies, upon complying with the conditions of this Chapter applicable to them, may be admitted to transact in this State any class of insurance authorized by the laws in force relative to the duties, obligations, prohibitions, and penalties of insurance companies, and subject to all laws applicable to the transaction of such business by foreign or alien insurance companies and their agents. (1899, c. 54, s. 61; Rev., s. 4746; C.S., s. 6410; 1945, c. 384; 1987, c. 629, s. 17.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, deleted "by constituted agents resident herein," preceding "any class of insurance authorized."

§ 58-150. Conditions of admission.

A foreign or alien insurance company may be admitted and authorized to do business when it:

(4) Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

(6) Satisfied the Commissioner that it is in substantial compliance with the provisions of G.S. 58-72.1 through G.S. 58-72.3 and Article 35 of this Chapter. (1899, c. 54, s. 62; 1901, c. 391, s. 5; 1903, c. 438, s. 6; Rev., s. 4747; C.S., s. 6411; 1945, c. 384; 1951, c. 781, s. 3; 1985 (Reg. Sess., 1986), c. 1027, s. 32; 1987, c. 629, s. 20.)

For subdivision (4) of this section as in effect until February 1, 1988, see the main volume.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

§ 58-149 has a delayed effective date. See notes for date.

§ 58-150(4) has a delayed repeal date. See notes for date.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, added subdivision (6).

The 1987 amendment, effective February 1, 1988, repealed subdivision (4).

§ 58-151. Limitation as to kinds of insurance.

(a) Any foreign or alien company admitted to do business in this State shall be limited with respect to doing kinds of insurance in this State in the same manner and to the same extent as are domestic companies, provided that any foreign insurance company which has been licensed to do the business of life insurance in this State continuously during a period of 20 years next preceding March 6, 1945, may continue to be licensed, in the discretion of the Commissioner, to do the kind or kinds of insurance business which it was authorized to do immediately prior to March 6, 1945.

(b) Any foreign or alien company admitted to do business in this State shall have as a part of its corporate title one of the following: "insurance company," "insurance association," "insurance society," "life," "casualty," or "indemnity"; and "mutual," if the corporation is organized upon the mutual principle. (1899, c. 44, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6; Rev., s. 4748; 1911, c. 111, s. 2; C.S., s. 6412; 1945, c. 384; 1985 (Reg. Sess., 1986), c. 1027, s. 53.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, designated the first paragraph subsection (a) and added subsection (b).

§ 58-152. Retaliatory laws.

When, by the laws of any other state or nation, any fines, penalties, licenses, fees, deposits of money or of securities, or other obligations or prohibitions are imposed upon insurance companies of this State doing business in such other state or nation or upon their agents therein greater than those imposed by this State upon insurance companies of such other state, then, so long as such laws continue in force, the same fines, penalties, licenses, fees, deposits, obligations and prohibitions, of whatever kind, may in the discretion of the Commissioner be imposed upon all such insurance companies of such other state or nation doing business within this State and upon their agents here. Nothing herein repeals or reduces the license, fees, taxes, and other obligations now imposed by the laws of this State or to go into effect with the companies of any other state or nation unless some company of this State is actually doing or seeking to do business in such state or nation. When an insurance company organized under the laws of any state or country is prohibited by the laws of such state or country or by its charter from investing its assets other than capital stock in the bonds of this State, then and in such case the Commissioner of Insurance is authorized and directed to refuse to grant a license to transact business in this State to such insurance company. (1899, c. 54, s. 71; 1903, c. 536, s. 11; Rev., s. 4749; C.S., s. 6413; 1927, c. 32; 1945, c. 384; 1987, c. 814, s. 3.)

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1987, rewrote the first sentence.

§ 58-153. Service of legal process upon Commissioner of Insurance.

As an alternative to service of legal process under the provisions of Rule 4 of the Rules of Civil Procedure, the service of such process upon any company licensed or admitted and authorized to do business in this State under the provisions of this Chapter may be made by the sheriff delivering and leaving a copy of such process in the office of the Commissioner of Insurance with a deputy duly appointed by the Commissioner for such purpose or acceptance of service of such process may be made by the Commissioner of Insurance or such duly appointed deputy. As a condition precedent to a valid service of process and of the action of the Commissioner in the premises, the party obtaining such service shall pay to the Commissioner of Insurance at the time of service or acceptance of service the sum of five dollars ($5.00), which such party shall recover as part of the taxable costs if he prevails in his action. (1899, c. 54, ss. 16, 62; 1903, c. 438, s. 6; Rev., s. 4750; C.S., s. 6414; 1927, c. 167, s. 1; 1931, c. 287; 1951, c. 781, s. 9; 1971, c. 421, s. 1; 1985, c. 666, s. 5.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "five dollars ($5.00)" for "one dollar ($1.00)" near the end of the last sentence.

§ 58-153.1. Unauthorized Insurers Process Act.

(b) Service of Process upon Unauthorized Insurer.

(1) Any of the following acts in this State, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

a. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein,

b. The solicitation of applications for such contracts,

c. The collection of premiums, membership fees, assessments or other considerations for such contracts, or

d. Any other transaction of business,

Is equivalent to and shall constitute an appointment by such insurer of the Commissioner of Insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this State upon such insurer.

(2) Such service of process shall be made by delivering to and leaving with the Commissioner of Insurance or some person in apparent charge of his office two copies thereof and the payment to him of five dollars ($5.00). The Commissioner of Insurance shall within four business days mail by certified or registered mail one of the copies of such process to the defendant at its last known principal place of busi-

ness, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection be valid if served upon any person within this State who, in this State on behalf or such insurer, is

a. Soliciting insurance, or

b. Making, issuing or delivering any contract of insurance, or

c. Collecting or receiving any premium, membership fee, assessment or other consideration for insurance.

And a copy of such process is sent within 10 days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(4) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(1955, c. 1040; 1985, c. 666, ss. 5, 8; 1987, c. 752, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "five dollars ($5.00)" for "one dollar ($1.00)" at the end of the first sentence of subdivision (b)(2) and substituted "within three business days" for "forthwith" and inserted "certified or" preceding "registered mail" in the second sentence of subdivision (b)(2).

The 1987 amendment, effective August 7, 1987, substituted "four" for "three" in the second sentence of subdivision (b)(2).

§ 58-154. Commissioner to notify company of service or acceptance of service of process.

When service of legal process is made in the manner provided in G.S. 58-153, the Commissioner of Insurance or his duly appointed deputy shall within four business days thereafter notify the company served of such service or acceptance of service by registered or certified mail directed to its secretary, or its resident manager in the case of a foreign company having no secretary in the United States. Such notification shall be accompanied by a copy of the process served or accepted and any pleading or order accompanying the process. The Commissioner shall keep a record which shall show the day and hour of such service or acceptance of service of process and whether any pleading or order accompanied the process. When service is made under the provisions of G.S. 58-153, the time within which to file a responsive pleading, as provided by Chapter 1A of the General Statutes, shall be deemed extended by 12 days. (1899, c. 54, s. 16; Rev., s. 4751; C.S., s. 6415; 1927, c. 167, s. 2; 1971, c. 421, s. 2; 1985, c. 666, s. 7; 1987, c. 752, s. 11.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "three business days" for "two business days" near the beginning of the first sentence.

The 1987 amendment, effective August 7, 1987, substituted "four" for "three" in the first sentence and substituted "12" for "10" in the last sentence.

Article 17A.

Mergers, Rehabilitation and Liquidation of Insurance Companies.

§ 58-155.1. Merger or consolidation.

(b) Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer under an agreement whereby the reinsuring company succeeds to all of the liabilities of and supplants the domestic insurance company thereon shall be deemed a consolidation for the purposes of this section. (1947, c. 923; 1955, c. 905; 1985, c. 572, s. 4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, rewrote subsection (b).

§ 58-155.10. Uniform Insurers Liquidation Act; definitions.

This section and G.S. 58-155.11 to 58-155.17 inclusive, comprise and may be cited as the Uniform Insurers Liquidation Act. For the purposes of this act:

(12) "State" means any state of the United States, the District of Columbia, or Puerto Rico. (1943, c. 170; 1947, c. 923; 1987, c. 864, s. 44.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, rewrote subdivision (12).

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984); Universal Marine Ins. Co. v. Beacon Ins. Co., 592 F. Supp. 948 (W.D.N.C. 1984).

§ 58-155.11. Conduct of delinquency proceedings against insurers domiciled in this State.

(b) As domiciliary receiver the Commissioner shall be vested by operation of law with the title to all of the property, contracts, including reinsurance contracts or treaties, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer, or to liquidate the United States branch of an alien insurer domiciled in this State, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this State as to assets located in this State.

(1947, c. 923; 1985, c. 572, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, inserted "including reinsurance contracts or treaties" near the beginning of subsection (b).

CASE NOTES

Cited in Universal Marine Ins. Co. v. Beacon Ins. Co., 768 F.2d 84 (4th Cir. 1985).

§ 58-155.12. Conduct of delinquency proceedings against insurers not domiciled in this State.

(b) The domiciliary receiver, for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, rights of action, books, and records of the insurer that are located in this State; and he shall have the right, acting through the ancillary receiver, to recover balances[,] less allowable offsets as provided in G.S. 58-155.28, due from local agents and to obtain possession of any books and records of the insurer that are found in this State. He shall also be entitled to recover the other assets of the insurer located in this State except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practica-

ble, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this State.

(1947, c. 923; 1987, c. 864, s. 58.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Subsection (b) was amended by Session Laws 1987, c. 864, s. 58, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, rewrote the first sentence of subsection (b).

CASE NOTES

Creditors in nondomiciliary states are at liberty to prefer themselves by commencing attachment or similar proceedings against such property as may be found in their respective states. This, of course, results in inequity as to other creditors. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

Wasteful conflicts are likely to arise between the domiciliary and the ancillary receivers during the administration of the assets since each receiver feels bound to seize as much of the company's property as possible in order that he may protect local creditors to the greatest possible extent. By requiring consolidation of general assets with the domiciliary receiver, while allowing local general creditors to prove their claims locally, the Uniform Act resolves problems both of unfair preferences for local creditors and of unnecessary hardship to them in participating in the domiciliary proceedings. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.13. Claims of nonresidents against domestic insurers.

(b) Controverted claims belonging to claimants residing in reciprocal states may either

(1) Be proved in this State as provided by law, or

(2) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings.

In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this State as provided in G.S. 58-155.14 with respect to ancillary proceedings in this State, the final allowance of such claim by the courts in the ancillary state shall be accepted in this State as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. (1947, c. 923.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — In order to correct an error in the bound volume, "Controverted" has been substituted for "Converted" at the beginning of subsection (b), as set out above.

CASE NOTES

Cited in Universal Marine Ins. Co. v. Beacon Ins. Co., 768 F.2d 84 (4th Cir. 1985).

§ 58-155.14. Claims against foreign insurers.

CASE NOTES

Creditors in nondomiciliary states are at liberty to prefer themselves by commencing attachment or similar proceedings against such property as may be found in their respective states. This, of course, results in inequity as to other creditors. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

Wasteful conflicts are likely to arise between the domiciliary and the ancillary receivers during the administration of the assets since each receiver feels bound to seize as much of the company's property as possible in order that he may protect local creditors to the greatest possible extent. By requiring consolidation of general assets with the domiciliary receiver, while allowing local general creditors to prove their claims locally, the Uniform Act resolves problems both of unfair preferences for local creditors and of unnecessary hardship to them in participating in the domiciliary proceedings. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

Cited in Universal Marine Ins. Co. v. Beacon Ins. Co., 768 F.2d 84 (4th Cir. 1985).

§ 58-155.15. Priority of certain claims.

(a) The following priority of claims in the distribution of the assets of an insurer domiciled in this State is established:

(1) Claims for cost of administration and conservation of assets of the insurer.

(2) Compensation actually owing to employees other than officers of the insurer for services rendered within three months prior to the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars ($1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.

(3) Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, up to an amount of three hundred thousand dollars ($300,000) per claim; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.

(4) Claims for unearned premiums.

(5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; those portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, in excess of three hundred thousand dollars ($300,000) per claim; and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.

(d) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in G.S. 58-155.10 to 58-155.17, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. (1947, c. 923; 1985, c. 10, s. 1; 1987, c. 864, ss. 5, 18.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Feb. 27, 1985, rewrote subsection (a).

The 1987 amendment, effective August 14, 1987, substituted "those arising out of reinsurance agreements" for "reinsurers" in subdivisions (a)(3) and (a)(5), and substituted "G.S. 58-155.10 through G.S. 58-155.17" for "this act" in subsection (d).

§ 58-155.17. Uniformity of interpretation.

CASE NOTES

Applied in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.25. Date rights fixed on liquidation.

CASE NOTES

This section must be read in conjunction with § 58-155.60. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.27: Repealed by Session Laws 1985, c. 10, s. 2, effective February 27, 1985.

Cross References. — For similar provisions, see now § 58-155.15(a)(2).

§ 58-155.28. Offsets.

(c) A set-off credit shall be permitted to local agents against agents' balances otherwise payable to the domiciliary or ancillary receiver for the amount expended by such agents to replace insurance coverage of their insureds and the reasonable expenses incident thereto as a result of any domestic, foreign or alien insurer being placed in delinquency proceedings. Agents claiming such set-off shall within 60 days of replacing such coverage provide a verified accounting of the replacement of such insurance to the domiciliary receiver, the ancillary receiver, if any, and the North Carolina Insurance Guaranty Association or similar organization in the state of residence of the policyholder. The verified accounting shall include the name of the agent, the name of the insured, the policy number, the replacement policy number, the cost of the replacement policy, the amount of unearned premium under each policy as to which set off is claimed, any claimed expenses and a verification that the accounting has been provided to each of the persons and entities described herein. Unearned premiums set off as provided above in any amount shall be deemed paid in full by the insurer and no person shall have a claim for such unearned premiums against the North Carolina Insurance Guaranty Association or similar organization in the state of residence of the policyholder. (1947, c. 923; 1987, c. 864, s. 59.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, added subsection (c).

Article 17B.

Postassessment Insurance Guaranty Association.

§ 58-155.41. Short title.

CASE NOTES

Applied in City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

§ 58-155.42. Purpose of Article.

CASE NOTES

The determination of whether particular policy of insurance is one of indemnity or liability depends upon the intention of the parties as evinced by the phraseology of the agreement in the policy. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

The fundamental distinction between policy of indemnity insurance and one of liability involves when the obligation of the insurer to the insured first attaches. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

The general distinction between indemnity insurance and liability insurance is that if the policy is one against liability, the coverage thereunder attaches when the liability attaches, regardless of actual loss at that time; but if the policy is one of indemnity only, an action

against the insurer does not lie until an actual loss in the discharge of the liability is sustained by the insured. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.45. Definitions.

As used in this Article:

(4) "Covered claim" means an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) determined to be insolvent by a court of competent jurisdiction.

(9) "Policyholder" means the person to whom an insurance policy to which this Article applies was issued by an insurer which has become an insolvent insurer. (1971, c. 670, s. 1; 1985, c. 613, ss. 1-3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 613, s. 11 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, and applicable to all covered claims existing as of that date or arising thereafter, to the extent allowed by law, inserted "is in excess of fifty dollars ($50.00) and" in the first sentence of subdivision (4), inserted "licensed and" in subdivision (5), and added subdivision (9).

§ 58-155.46. Creation of the Association.

There is created a nonprofit, unincorpoated legal entity to be known as the North Carolina Insurance Guaranty Association. All insurers defined as member insurers in G.S. 58-155.45(6) shall be and remain members of the Association as a condition of their authority to transact insurance in this State. The Association shall perform its functions under a plan of operation established and approved under G.S. 58-155.49 and shall exercise its powers through a board of directors established under G.S. 58-155.47. For purposes of administration and assessment, the Association shall be divided into two separate accounts: (i) the automobile insurance account; and (ii) the account for all other insurance to which the Article applies. Each person becoming a member insurer after October 1, 1985, shall pay to the Association upon demand a nonrefundable initial membership fee of fifty dollars ($50.00). (1971, c. 670, s. 1; 1985, c. 613, s. 4.)

Editor's Note. — Session Laws 1985, c. 613, s. 11 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, and applicable to all covered claims existing as of that date or arising thereafter, to the extent allowed by law, added the last sentence.

CASE NOTES

Applied in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.47. Board of directors.

(a) The board of directors of the Association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. One non-voting member of the board shall be a property and casualty insurance agent authorized to write insurance for a member insurer, and appointed by the Commissioner; and the remaining members shall be selected by member insurers subject to the approval of the Commissioner. Vacancies of the Board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within 60 days after June 25, 1971, the Commissioner may appoint the initial members of the board of directors.

(1971, c. 670, s. 1; 1987, c. 864, s. 60.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, substituted the language beginning "one non-voting member" and ending "the remaining members" for "The members of the board" at the beginning of the second sentence of subsection (a).

§ 58-155.48. Powers and duties of the Association.

(a) The Association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is less than three hundred thousand dollars ($300,000). In no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(2) Be deemed the insurer to the extent of the Association's obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(3) Allocate claims paid and expenses incurred among the two accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the Association under subsection (a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examina-

tions under G.S. 58-155.53 and other expenses authorized by this Article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account; provided, for purposes of assessment only, premiums otherwise reportable by a servicing insurer under any plan of operation approved by the Commissioner of Insurance under Articles 18A or 18B of this Chapter shall not be deemed to be the net direct written premiums of such servicing insurer or association, but shall be deemed to be the net direct written premiums of the individual insurers to the extent provided for in any such plan of operation. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent (2%) of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(4) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(5) Notify such persons as the Commissioner directs under G.S. 58-155.50(b)(1).

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but such designation may be declined by a member insurer.

(7) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Associa-

tion and shall pay the other expenses of the Association authorized by this Article.

(1971, c. 670, s. 1; 1977, c. 343; 1979, c. 295, s. 1; 1985, c. 613, ss. 5, 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 613, s. 11 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, and applicable to all covered claims existing as of that date or arising thereafter, to the extent allowed by law, deleted "is in excess of one hundred dollars ($100.00) and" preceding "is less than three hundred thousand dollars ($300,000)" at the end of the first sentence of subdivision (a)(1) and substituted "the Association's" for "its" in subdivision (a)(2).

CASE NOTES

The Legislature intended that the equivalent of the association have a direct right to facility proceeds. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

The determination of whether particular policy of insurance is one of indemnity or liability depends upon the intention of the parties as evinced by the phraseology of the agreement in the policy. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

The fundamental distinction between policy of indemnity insurance and one of liability involves when the obligation of the insurer to the insured first attaches. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

The general distinction between indemnity insurance and liability insurance is that if the policy is one against liability, the coverage thereunder attaches when the liability attaches, regardless of actual loss at that time; but if the policy is one of indemnity only, an action against the insurer does not lie until an actual loss in the discharge of the liability is sustained by the insured. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

Prejudgment Interest Assessed Against Guaranty Association. — Although North Carolina allows prejudgment interest to be awarded in a breach of contract action, whether prejudgment interest may be assessed against an insurance guaranty association where the insolvent insurer might have been liable for it is a question not yet encountered by North Carolina courts. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

§ 58-155.51. Effect of paid claims.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.52. Nonduplication of recovery.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the policyholder except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(c) No claim held by an insurer, reinsurer, insurance pool, or underwriting association, based on an assignment or on rights of subrogation, may be asserted in any legal action against a person insured under a policy issued by an insolvent insurer except to the extent the amount of such claim exeeds the obligation of the Association under G.S. 58-155.48(a)(1).

(d) Any person that has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his rights under such policy issued by the solvent insurer before execution, levy, or any other proceedings are commenced to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. (1971, c. 670, s. 1; 1985, c. 613, ss. 7, 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 613, s. 11 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, and applicable to all covered claims existing as of that date or arising thereafter, to the extent allowed by law, substituted "policyholder" for "insured" in the first sentence of subsection (b) and added subsections (c) and (d).

CASE NOTES

This statute applies only to claims that are concurrently covered by both a policy of an insolvent insurer and a policy of a solvent insurer. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

Prejudgment Interest Assessed Against Guaranty Association. — Although North Carolina allows prejudgment interest to be awarded in a breach of contract action, whether prejudgment interest may be assessed against an insurance guaranty association where the insolvent insurer might have been liable for it is a question not yet encountered by North Carolina courts. City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984).

§ 58-155.60. Use of deposits made by insolvent insurer.

Notwithstanding any other provision of this Chapter pertaining to the use of deposits made by insurance companies for the protection of policyholders, the Commissioner shall deliver to the Association, and the Association is hereby authorized to expend, any deposit or deposits previously or hereinafter made, whether or not required by statute, by an insolvent insurer to the extent those deposits are needed by the Association first to pay the covered claims as required by this Article and then to the extent those deposits are needed to pay all expenses of the Association relating to the insurer: Provided that before delivering any deposit to the Association the Commissioner may retain an amount of the deposit up to five thousand dollars ($5,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term "administrative costs" does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-155.11(f) or 58-155.36.

However, in the case of a deposit made by an insolvent domestic insurer, only the portions of the deposit made for the protection of policyholders having covered claims shall be delivered by the Commissioner to the Association. Said portions shall be in the proportions that the insolvent domestic insurer's domestic net direct written premiums for the preceding calendar year on the kinds of insurance in the account bears to its total net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

The Association shall account to the Commissioner and the insolvent insurer for all deposits received from the Commissioner hereunder, and shall repay to the Commissioner a portion of the deposits received which shall be equal to the total amount of the claims against the insolvent insurer that are not covered claims under this Article solely by reason that the amount of the claim is fifty dollars ($50.00) or less. Said repayment shall in no way prejudice the rights of the Association with regard to the portion of the deposit repaid to the Commissioner. After all of the deposits of the insolvent insurer have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article. (1979, c. 628; 1985, c. 613, s. 10; c. 666, s. 41; 1987, c. 864, s. 6.)

Editor's Note. — Session Laws 1985, c. 613, s. 11 is a severability clause.

Effect of Amendments. — Session Laws 1985, c. 613, s. 10, effective July 4, 1985, and applicable to all covered claims existing as of that date or arising thereafter, to the extent allowed by law, substituted "the total amount of the claims against the insolvent insurer that are not covered claims under this Article solely by reason that the amount of the claim is fifty dollars ($50.00) or less" for "an amount computed by adding the lesser of the amount of the covered claim or one hundred dollars ($100.00) for each covered claim" at the end of the first sentence of the third paragraph.

Session Laws 1985, c. 666, s. 41, effective July 10, 1985, added the proviso at the end of the first sentence of the first paragraph and added the second sentence of that paragraph.

The 1987 amendment, effective August 14, 1987, substituted "this Chapter" for "Chapter 58 of the General Statutes" and deleted "in excess of one hundred dollars ($100.00)" in the first sentence of the first paragraph.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

This section must be read in conjunction with § 58-155.25. North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-155.61. Statute of repose; guardians ad litem; notice.

(a) Notwithstanding any other provision of law, a covered claim with respect to which settlement is not effected with the Association, or suit is not instituted against the insured of an insolvent insurer or the Association, within five years after the date of entry of the order by a court of competent jurisdiction determining the insurer to be insolvent, shall thenceforth be barred forever as a claim against the Association.

(b) As to any person under a disability described in G.S. 1-17, the Association may not invoke the bar of the period of repose provided in subsection (a) of this section unless the Association has petitioned for the appointment of a guardian ad litem for such person and the disposition of that petition has become final. If a guardian ad litem is appointed pursuant to this subsection more than four years after the date of entry of the order by a court of competent jurisdiction determining the insurer to be insolvent, the period of repose under subsection (a) of this section shall be extended for such person one year after the date of the appointment.

(c) Within six months after the Association has been activated as to an insolvent insurer, the Commissioner may request that the Association submit an amendment to the plan of operation in accordance with G.S. 58-155.49, which amendment shall be applicable only to that insolvent insurer and shall prescribe a fair, reasonable, and equitable procedure for notice to insureds and to the public. (1985, c. 613, s. 9.)

Editor's Note. — Session Laws 1985, c. 613, s. 12 makes this section effective upon ratification, and applicable to all covered claims existing as of that date or arising thereafter, to the extent allowed by law. The act was ratified July 4, 1985.

Session Laws 1985, c. 613, s. 11 is a severability clause.

§§ 58-155.62 to 58-155.64: Reserved for future codification purposes.

Article 17C.

Life and Accident and Health Insurance Guaranty Association.

§ 58-155.84. Use of deposits made by impaired insurer.

Notwithstanding any other provision of Chapter 58 of the General Statutes pertaining to the use of deposits made by insurance companies for the protection of policyholders, the Commissioner shall deliver to the Association, and the Association is hereby authorized to expend, any deposit or deposits previously or hereinafter made, whether or not made pursuant to statute, by an insurer determined to be impaired under this Article to the extent those deposits are needed by the Association to pay contractual obligations of that impaired insurer owed under covered policies as required by this Article, and to the extent those deposits are needed to pay all expenses of the Association relating to the impaired insurer: Provided that before delivering any deposit to the Association the Commissioner may retain an amount of the deposit up to five thousand dollars ($5,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term "administrative costs" does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-155.11(f) or

58-155.36. The Association shall account to the Commissioner and the impaired insurer for all deposits received from the Commissioner hereunder. After all of the deposits of the impaired insurer have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article. (1979, c. 418; 1985, c. 666, s. 42.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, added the proviso at the end of the first sentence and inserted the second sentence.

SUBCHAPTER III. FIRE INSURANCE.

ARTICLE 18.

General Regulations of Business.

§ 58-158. Limitation as to amount and term; indemnity contracts for difference in actual value and cost of replacement.

CASE NOTES

Applied in Surrant v. Grain Dealers Mut. Ins. Co., 74 N.C. App. 288, 328 S.E.2d 16 (1985).

§ 58-162. Reinsurance assumed from unlicensed companies prohibited.

It shall be unlawful for any fire, marine, or fire and marine insurance company licensed to do business in this State to assume reinsurance on property located in this State from a company that is not licensed to do business in this State. Any person that violates this section shall be subject to cancellation of its license to do business in this State; and upon conviction the person shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each offense, in the discretion of the court. (1899, c. 54, s. 63; 1901, c. 391, s. 5; Rev., s. 4770; C.S., s. 6422; 1945, c. 378; 1985, c. 666, s. 25.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, rewrote this section.

§ 58-164. Uniform Unauthorized Insurers Act.

(d) The provisions of the three foregoing subsections do not apply to contracts of reinsurance, or to contracts of insurance made through surplus lines licensees as provided in Article 36 of this Chapter, nor do they apply to any insurer not authorized in this State, or its representatives, in investigating, adjusting losses or otherwise complying in this State with the terms of its insurance contracts made in a state wherein the insurer was authorized; provided, the property or risk insured under such contracts at the time such contract was issued was located in such other state. A motor vehicle used and kept garaged principally in another state shall be deemed to be located in such state.

(e) (1) Repealed by Session Laws 1985, c. 666, s. 40, effective July 10, 1985.

(2) Such service of process shall be made by delivering and leaving with the Commissioner or to some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The Commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all such process so served upon him. Such service of process is sufficient provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a judgment by default under this subdivision (2) until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(3) Service of process in any such action, suit or proceeding shall be in addition to the manner provided in the preceding subdivision (2) be valid if served upon any person within this State who, in this State on behalf of such insurer, is

a. Soliciting insurance, or

b. Making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or

c. Collecting or receiving any premium for insurance; and a copy of such process is sent within 10 days thereafter by registered mail by plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of plaintiff's

attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

d. Nothing in this subsection (e) shall limit or abridge the right to serve process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(h) Any person, corporation, association or partnership violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000).

(1899, c. 54, s. 105; Rev., s. 4763; C.S., s. 6424; 1945, c. 386; 1985, c. 666, ss. 20, 40; 1987, c. 864, s. 17.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1985, c. 666, s. 20, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)" in subsection (h).

Session Laws 1985, c. 666, s. 40, effective July 10, 1985, deleted subdivision (e)(1), which provided that the transacting of business in this State by a foreign or alien insurer without a license and the issuance or delivery by such insurer of a policy or contract of insurance to a citizen or resident of this State or to a corporation authorized to do business therein was equivalent to an appointment by such insurer of the commissioner to be its true and lawful attorney upon whom might be served all lawful process in any action, suit or proceeding arising out of such policy or contract of insurance.

The 1987 amendment, effective August 14, 1987, substituted "surplus lines licensees as provided in Article 36 of this Chapter" for "authorized surplus line agents or authorized surplus line brokers as provided in G.S. 58-53.1, 58-53.2, and 58-53.3."

§§ 58-168, 58-169: Repealed by Session Laws 1987, c. 629, s. 20, effective February 1, 1988.

For these sections as in effect until February 1, 1988, see the main volume.

§ 58-172. Agreements restricting agent's commission; penalty.

It is unlawful for any insurance company doing the business of insurance as defined in subdivisions (3) to (22), inclusive, of G.S. 58-72 and employing an agent representing another such company, either directly or through any organization or association, to enter into, make or maintain any stipulation or agreement in anywise limiting the compensation such agent may receive from any such other company or forbidding or prohibiting reinsurance of the risks of any such domestic company in whole or in part by any other company holding membership in or cooperating with such organization or association. The penalty for any violation of this section shall be a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and the forfeiture of license to do business in this State for a period of 12 months following

conviction. (1905, c. 424; Rev., ss. 3491, 4768; 1915, c. 166, ss. 2, 3; C.S., s. 6432; 1945, c. 458; 1985, c. 666, s. 26.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "two hundred and fifty dollars ($250.00)" and "five thousand dollars ($5,000)" for "five hundred dollars ($500.00)" near the end of the section.

§ 58-173. Punishment for issuing fire policies contrary to law.

Any insurance company or agent who makes, issues, or delivers a policy of fire insurance in willful violation of the provisions of this Chapter which prohibit a domestic insurance company from issuing policies before obtaining certificate and authority from the Commissioner of Insurance; or which prohibit the issuing of a fire insurance policy for more than the fair value of the property or for a longer term than seven years; or which prohibit stipulations in insurance contracts restricting the jurisdiction of courts, or limiting the time within which an action may be brought to less than one year after the cause of action accrues or to less than six months after a nonsuit by the plaintiff, shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000); but the policy shall be binding upon the company issuing it. (1899, c. 54, s. 99; 1903, c. 438, s. 10; Rev., s. 4832; C.S., s. 6433; 1985, c. 666, s. 27.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000)" for "shall forfeit for each offense not less than fifty ($50.00) nor more than two hundred dollars ($200.00)" near the end of the section.

Article 18A.

Essential Property Insurance for Beach Area Property.

§ 58-173.2. Definition of terms.

In this Article, unless the context otherwise requires,

(3a) "Crime insurance" means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.

(5) "Insurable property" means real property at fixed locations in beach areas of the State as that term is hereinafter defined or the tangible personal property located therein, but shall not include insurance on motor vehicles, farm and manufacturing risks, which property is determined by

the Association, after inspection and pursuant to the criteria specified in the plan of operation, to be in an insurable condition: Provided, however, any one and two family dwellings built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article, but neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property shall not be considered in determining insurable condition. Provided further, that any structure commenced on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina Building Code; provided, however, such individual certificate shall not be necessary in those cases where the structure is located within a political subdivision which has certified to the Association on an annual basis that it is enforcing the North Carolina Uniform Residential Building Code or the North Carolina Building Code and has no plans to discontinue enforcing these codes during that year.

(1967, c. 1111, s. 1; 1969, c. 249; 1979, c. 601, ss. 2, 3; 1985, c. 516, s. 1; 1985 (Reg. Sess., 1986), c. 1027, ss. 21, 25).

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, added the proviso to the last sentence of subdivision (5).

The 1985 (Regular Session, 1986) amendment, effective July 16, 1986, added subdivision (3a), and inserted the language beginning "The Federal Manufactured Home" and ending "approved by the Commissioner, or" in three places in subdivision (5).

§ 58-173.7. Directors to submit plan of operation to Commissioner; review and approval; amendments.

Within 90 days after April 17, 1969, the directors of the Association shall submit to the Commissioner for his review and approval, a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property insurance voluntarily written in the beach area and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach areas of North Carolina so as to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in such areas. Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation; the establishment of necessary facilities; management of the Association; plan for the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for insurance and for such other provisions as may be deemed necessary by the Commissioner to carry out the purposes of this Article.

The proposed plan shall be reviewed by the Commissioner and approved by him if he finds that such plan fulfills the purposes provided by G.S. 58-173.1 of this Article. In the review of the proposed plan the Commissioner may, in his discretion, consult with the directors of the Association and may seek any further information which he deems necessary to his decision. If the Commissioner approves the proposed plan, he shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Commissioner disapproves all or any part of the proposed plan of operation he shall return the same to the directors with his written statement for the reasons for disapproval and any recommendations he may wish to make. The directors may alter the plan in accordance with the Commissioner's recommendation or may within 30 days from the date of disapproval return a new plan to the Commissioner. Should the directors fail to submit a proposed plan of operation within 90 days of April 17, 1969, or a new plan which is acceptable to the Commissioner, or accept the recommendations of the Commissioner within 30 days after his disapproval of the plan, the Commissioner shall promulgate and place into effect a plan of operation certifying the same to the directors of the Association. Any such plan promulgated by the Commissioner shall take effect 10 days after certification to the directors: Provided, however, that until a plan of operation is in effect, pursuant to the provisions of this Article, any existing temporary placement facility may be continued in effect on a mandatory basis on such terms as the Commissioner may determine.

The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The

Commissioner may review the plan of operation at any time he deems expedient or prudent, but not less than once in each calendar year. After review of such plan the Commissioner may amend the plan after consultation with the directors and upon certification to the directors of such amendment.

The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 12B of this Chapter, and the commission rates to be paid to agents or brokers for these policies, if he finds, after a hearing held in accordance with G.S. 58-9.2, that the public interest requires the designation. The provisions of Chapter 150B do not apply to any procedure under this paragraph, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this paragraph. Within 30 days after the receipt of notification from the Commissioner of a change in designation pursuant to this paragraph, the association shall submit a revised plan and articles of association for approval in accordance with this section. (1967, c. 1111, s. 1; 1969, c. 249; 1986, Ex. Sess., c. 7, s. 8; 1987, c. 864, s. 41.)

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Section 12 of Session Laws 1986, Extra Session, c. 7 is a severability clause.

Session Laws 1987, c. 421, which amended § 58-173.8, provides in s. 3 that within 60 days after the effective date of the act (June 19, 1987), the Board of Directors of the Beach Plan shall submit a revised plan of operation for approval by the Commissioner in accordance with this section.

Effect of Amendments. — The 1986 Extra Session amendment, effective February 18, 1986, added the last paragraph.

The 1987 amendment, effective August 14, 1987, substituted "this paragraph" for "this subsection" in the second and third sentences of the last paragraph.

§ 58-173.8. (Effective until February 1, 1988) Persons eligible to apply to Association for coverage; contents of application.

(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. Such application may be made on behalf of the applicant by a broker or agent authorized by him. Every such application shall be submitted on forms prescribed by the Association after consultation with the Commissioner, which application shall contain statement as to whether or not there is any unpaid premiums due from the applicant for fire insurance on the property.

The term "insurable interest" as used in this subsection shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

§ 58-173.8 is set out twice. See headings for effective dates.

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association upon receipt of the premium, or such portion thereof, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, or their successor forms of coverage, and crime insurance, and separate policies of windstorm and hail insurance, for a term of one year. Any policy issued pursuant to the provisions of this section shall be renewed annually, upon application therefor, so long as the property meets the definition of "insurable property" set forth in G.S. 58-173.2(5).

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an application within the time prescribed in the plan of operation, such applicant may appeal to the Commissioner and the Commissioner, or a member of his staff designated by him, after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out his duties pursuant to this section, the Commissioner may request, and the Association shall provide any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application.

(d) An agent who is licensed under North Carolina General Statutes 58-40(a) as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association.

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks for which fire insurance has been written by licensed insurers. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the fire insurance is in force. Notwithstanding G.S. 58-173.10, the rates, rating plans, and rating rules for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval before they may be used. (1967, c. 1111, s. 1; 1969, c. 249; 1985, c. 516, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 22; 1987, c. 421, ss. 1, 2; c. 864, s. 24.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 58-173.8.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Session Laws 1987, c. 421, s. 3 provides that within 60 days after the effective date of the act (June 19, 1987), the Board of Directors of the Beach Plan shall submit a revised plan of operation for approval by the Commissioner in accordance with § 58-173.7.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, added subsection (d).

The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, inserted "and shall offer additional extended coverage and crime insurance" in the first sentence of subsection (b).

Session Laws 1987, c. 421, ss. 1, 2, effective June 19, 1987, inserted "and separate policies of windstorm and hail insurance" near the end of the first sentence of subsection (b), and added subsection (e).

Session Laws 1987, c. 864, s. 24, effective August 14, 1987, inserted "optional

§ 58-173.8 is set out twice. See headings for effective dates.

perils endorsements, or their successor forms of coverage" in subsection (b).

§ 58-173.8. (Effective February 1, 1988) Persons eligible to apply to Association for coverage; contents of application.

(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. Such application may be made on behalf of the applicant by a broker or agent authorized by him. Every such application shall be submitted on forms prescribed by the Association after consultation with the Commissioner, which application shall contain statement as to whether or not there is any unpaid premiums due from the applicant for fire insurance on the property.

The term "insurable interest" as used in this subsection shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association upon receipt of the premium, or such portion thereof, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, or their successor forms of coverage, and crime insurance, and separate policies of windstorm and hail insurance, for a term of one year. Any policy issued pursuant to the provisions of this section shall be renewed annually, upon application therefor, so long as the property meets the definition of "insurable property" set forth in G.S. 58-173.2(5).

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an application within the time prescribed in the plan of operation, such applicant may appeal to the Commissioner and the Commissioner, or a member of his staff designated by him, after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out his duties pursuant to this section, the Commissioner may request, and the Association shall provide any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application.

(d) An agent who is licensed under Article 45 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association.

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks for which fire insurance has been written by licensed insurers. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the fire insurance is in force. Notwithstanding G.S. 58-173.10, the rates, rating

§ 58-173.8 is set out twice. See headings for effective dates.

plans, and rating rules for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval before they may be used. (1967, c. 1111, s. 1; 1969, c. 249; 1985, c. 516, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 22; 1987, c. 421, ss. 1, 2; c. 629, s. 11; c. 864, s. 24.)

Section Set Out Twice. — This section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-173.8.

Editor's Note. —

Session Laws 1987, c. 421, s. 3 provides that within 60 days after the effective date of the act (June 19, 1987), the Board of Directors of the Beach Plan shall submit a revised plan of operation for approval by the Commissioner in accordance with § 58-173.7.

Effect of Amendments. — Session Laws 1987, c. 421, ss. 1, 2, effective June 19, 1987, inserted "and separate policies of windstorm and hail insurance" near the end of the first sentence of subsection (b), and added subsection (e).

Session Laws 1987, c. 864, s. 24, effective August 14, 1987, inserted "optional perils endorsements, or their successor forms of coverage" in subsection (b).

Session Laws 1987, c. 629, s. 11, effective February 1, 1988, substituted "Article 45 of this Chapter" for "North Carolina General Statute 58-40(a)" in subsection (d).

§ 58-173.11. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after such ruling appeal to the Commissioner. Any hearings held by the Commissioner of Insurance pursuant to such an appeal shall be in accordance with the procedure set forth in G.S. 58-9.2: Provided, however, the Commissioner of Insurance is authorized to appoint a member of his staff as deputy commissioner for the purpose of hearing such appeals and a ruling based upon such hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner of Insurance may appeal as is provided by the provisions of G.S. 58-9.3. (1967, c. 1111, s. 1; 1969, c. 249; 1985, c. 516, s. 3.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, rewrote the first sentence.

§ 58-173.16A. Premium taxes to be paid through Association to Commissioner.

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the Commissioner as provided in Article 8B of Chapter 105 of the General Statutes. (1985 (Reg. Sess., 1986), c. 928, s. 10.)

§ 58-173.8 is set out twice. See headings for effective dates.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 928, s. 14 makes this section effective upon ratification. The act was ratified July 8, 1986.

Article 18B.

Fair Access to Insurance Requirements.

§ 58-173.17. Purpose and geographic coverage of Article.

(a) It is the purpose of this Article to provide a program whereby adequate basic property insurance may be made available to property owners having insurable property in the State. It is further the purpose of this Article to encourage the improvement of properties located in the State and to arrest the decline of properties located in the State.

(b) This Article shall apply to all geographic areas of the State except the "Beach Area" defined in G.S. 58-173.2(2).

(c) As used in this Article, "crime insurance" means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609. (1969, c. 1284; 1985, c. 519, s. 1; 1986, Ex. Sess., c. 7, s. 4; 1985 (Reg. Sess., 1986), c. 1027, s. 24.)

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Session Laws 1986, Extra Session, c. 7, s. 12 and Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57 are severability clauses.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted "and to enable insurers during business in the State to participate in the federal reinsurance provisions or Public Law 90-448, 90th Congress, August 1, 1968" at the end of the first sentence.

The 1986 Extra Session amendment, effective February 18, 1986, rewrote this section, which formerly read "It is the purpose of this Article to provide a program whereby adequate basic property insurance may be made available to property owners having insurable property in urban areas of the State. It is further the purpose of this Article to encourage the improvement of properties located in urban areas of the State and to arrest the decline of properties located in such areas." The act also rewrote the catchline to this section, which formerly read "Purpose of Article."

The 1985 (Regular Session, 1986) amendment, effective July 16, 1986, added subsection (c).

§ 58-173.18. Organization of underwriting association.

All insurers licensed to write and writing property insurance in this State on a direct basis are authorized, subject to the approval and regulation by the Commissioner, to establish and maintain a FAIR Plan (Fair Access to Insurance Requirements) and to establish and maintain an underwriting association and to formulate, and from time to time, to amend the plans and articles of the association and rules and regulations in connection therewith, and to assess and share on a fair and equitable basis all expenses, income and losses incident to such FAIR Plan and underwriting association in a manner consistent with the provisions of this Article. (1969, c. 1284; 1985, c. 519, s. 2.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted "and in conformity with the Urban Property Protection and Reinsurance Act of 1968. (Title XI of Housing and Urban Development Act of 1968, Public Law 90-448, 90th Congress, August 1, 1969)" at the end of this section.

§ 58-173.19. (Effective until February 1, 1988) Participation in association.

(a) Every insurer authorized to write basic property insurance in this State except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-77(5)b, 58-77(5)d and 58-77(7)b and except an insurer who only writes insurance on property exempted from taxation by the provisions of G.S. 105-296 and 105-297 shall be required to become and remain a member of the Plan and underwriting association and comply with the requirements thereof as a condition of its authority to transact basic property insurance business in the State of North Carolina.

(b) An agent who is licensed under G.S. 58-40(b) as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association. (1969, c. 1284; 1971, c. 1067, s. 1; 1985, c. 519, s. 3.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 58-173.19.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, designated the first paragraph as subsection (a), deleted a former second sentence of the first paragraph, which read: "The premiums paid by insurers of North Carolina property to the National Insurance Development Fund for reinsurance, shall be used for the payment of losses occurring in this State and shall, to the extent not so used, be credited to the participation of such insurers in the reinsurance facility provided by this Article and the federal act," and added subsection (b).

§ 58-173.19 is set out twice. See headings for effective dates.

§ 58-173.19. (Effective February 1, 1988) Participation in association.

(a) Every insurer authorized to write basic property insurance in this State except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-77(5)b, 58-77(5)d and 58-77(7)b and except an insurer who only writes insurance on property exempted from taxation by the provisions of G.S. 105-296 and 105-297 shall be required to become and remain a member of the Plan and underwriting association and comply with the requirements thereof as a condition of its authority to transact basic property insurance business in the State of North Carolina.

(b) An agent who is licensed under Article 45 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association. (1969, c. 1284; 1971, c. 1067, s. 1; 1985, c. 519, s. 3; 1987, c. 629, s. 12.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-173.19.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, substituted "Article 45 of this Chapter" for "G.S. 58-40(b)" in subsection (b).

§ 58-173.20. Requirements of Plan and authority of Association.

The Association formed pursuant to the provisions of this Article shall have authority on behalf of its members to cause to be issued basic property insurance policies, including coverage for farm risks; and shall offer additional extended coverage, optional perils endorsements, or their successor forms of coverage, and crime insurance policies; to reinsure in whole or in part, any such policies; and to cede any such reinsurance. The Plan adopted, pursuant to the provision of this Article, shall provide, among other things, for the perils to be covered, compensation and commissions, assessments of members, the sharing of expenses, income and losses on an equitable basis, cumulative weighted voting for the board of directors of the Association, the administration of the Plan and Association and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements. (1969, c. 1284; 1985, c. 519, s. 4; 1986, Ex. Sess., c. 7, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1027, s. 23; 1987, c. 864, s. 24.)

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Session Laws 1986, Extra Session, c. 7, s. 12 and Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57 are severability clauses.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted "provided the same permits each member insured thereof to qualify for federal insurance under the Urban Prop-

§ 58-173.19 is set out twice. See headings for effective dates.

erty Protection and Reinsurance Act of 1968" at the end of this section.

The 1986 Extra Session amendment, effective February 18, 1986, inserted ", including property insurance for farm risks" following "basic property insurance" in the first sentence, and deleted "the geographical areas of coverage," preceding "compensation and commissions" near the middle of the second sentence.

The 1985 (Regular Session, 1986) amendment, effective July 16, 1986, rewrote the first sentence.

The 1987 amendment, effective August 14, 1987, inserted "optional perils endorsements, or their successor forms of coverage" in the first sentence.

§ 58-173.21. Authority of Commissioner.

(c) The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 12B of this Chapter, and the commission rates to be paid to agents or brokers for these policies, if he finds, after a hearing held in accordance with G.S. 58-9.2, that the public interest requires the designation. The provisions of Chapter 150B do not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of notification from the Commissioner of a change in designation pursuant to this subsection, the association shall submit a revised plan and articles of association for approval in accordance with subsection (b) of this section. (1969, c. 1284; 1986, Ex. Sess., c. 7, s. 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes the act effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1.

Section 12 of Session Laws 1986, Extra Session, c. 7 is a severability clause.

Effect of Amendments. — The 1986 Extra Session amendment, effective February 18, 1986, added subsection (c).

§ 58-173.23. Appeals; judicial review.

The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, other than an act or decision relating to the cause or amount of a claimed loss, may be heard in person or by an authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of such ruling or decision. The Commissioner, after hearing held pursuant to the procedure set forth in G.S. 58-9.2, shall issue an order approving or disapproving the act or decision with respect to the matter which is the subject of appeal. The Commissioner is authorized to appoint a member of his staff as deputy commissioner for the

purpose of hearing such appeals and a ruling based on such hearing shall have the same effect as if heard by the Commissioner personally. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided by the provisions of G.S. 58-9.3. (1969, c. 1284; 1985, c. 519, s. 5.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, inserted "other than an act or decision relating to the cause or amount of a claim loss" in the first sentence.

§ 58-173.25: Repealed by Session Laws 1985, c. 519, s. 6, effective July 1, 1985.

§ 58-173.26. Assessment; inability to pay.

In the event any insurer fails by reason of insolvency to pay any assessment as provided herein, the amount assessed each insurer shall be immediately recalculated excluding therefrom the insolvent insurer so that its assessment is, in effect, assumed and redistributed among the remaining insurers. Such an assessment against an insolvent insurer shall not be a charge against any special deposit fund held under the provisions of Article 20 of Chapter 58 for the benefit of policyholders. (1969, c. 1284; 1985, c. 519, s. 7.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted ", as computed under G.S. 58-173.25," following "the amount assessed each insurer" in the first sentence.

§§ 58-173.27, 58-173.28: Repealed by Session Laws 1985, c. 519, s. 6, effective July 1, 1985.

Editor's Note. — Repealed § 58-173.27 was amended by Session Laws 1983, c. 396.

§ 58-173.29. Premium taxes to be paid through Association to Commissioner.

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the Commissioner as provided in Article 8B of Chapter 105 of the General Statutes. (1985 (Reg. Sess., 1986), c. 928, s. 10.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 928, s. 14 makes this section effective upon ratification. The act was ratified July 8, 1986.

§§ 58-173.30 to 58-173.33: Reserved for future codification purposes.

Article 18C.

North Carolina Health Care Liability Reinsurance Exchange.

§§ 58-173.34 to 58-173.51: Repealed by Session Laws 1983, c. 416, s. 2, effective June 2, 1983.

Article 19.

Fire Insurance Policies.

§ 58-176. Fire insurance contract; standard policy provisions.

Legal Periodicals. —

For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

CASE NOTES

I. IN GENERAL.

Legislative Intent. — The legislature did not intend that a claimant on a fire insurance policy should be denied coverage if he or she executes the proof of loss before a notary without raising his or her hand and swearing to the truth of the statements in the proof of loss. Thompson v. Home Ins. Co., 62 N.C. App. 562, 303 S.E.2d 209, cert. denied, 309 N.C. 324, 307 S.E.2d 169 (1983).

An insurance policy is but a special kind of contract and the terms agreed to therein, unless forbidden by law, are binding on insurer and insured alike. Payne v. Buffalo Reinsurance Co., 69 N.C. App. 551, 317 S.E.2d 408 (1984).

Statutory standard fire insurance policy is incorporated into every policy of fire insurance issued in North Carolina. Star Varifoam Corp. of Am. v. Buffalo Reinsurance Co., 64 N.C. App. 306, 307 S.E.2d 194 (1983), cert. denied, 310 N.C. 154, 311 S.E.2d 294 (1984).

A misrepresentation by an insured constitutes a breach of cooperation clause only when the misrepresentation results in some actual detriment to the insured. Bryant v. Nationwide Mut. Fire Ins. Co., 67 N.C. App. 616, 313 S.E.2d 803, cert. granted, 311 N.C. 399, 319 S.E.2d 267 (1984), aff'd in part and rev'd in part, 313 N.C. 362, 329 S.E.2d 333 (1985).

A misrepresentation during a loss investigation is material within the meaning of subsection (c) of this section only when the misrepresentation prejudices the insurer. Bryant v. Nationwide Mut. Fire Ins. Co., 67 N.C. App. 616, 313 S.E.2d 803, cert. granted, 311 N.C. 399, 319 S.E.2d 267 (1984), aff'd in part and rev'd in part, 313 N.C. 362, 329 S.E.2d 333 (1985).

To prevail in an affirmative defense of misrepresentation, the insurance company must prove that the insured made statements that were: 1) False, 2) material, and 3) knowingly and willfully made. Bryant v. Nationwide Mut. Fire Ins. Co., 313 N.C. 362, 329 S.E.2d 333 (1985); Pittman v. Nationwide Mut. Fire Ins. Co., 79 N.C. App. 431, 339 S.E.2d 441, cert. denied, 316 N.C. 733, 345 S.E.2d 391 (1986).

Insufficient Demand for Examination Under Oath. — Insurer's demand for an examination under oath, which failed to designate a date, time and place for the examination and the person before whom the examination was to be

taken, was insufficient, and under these circumstances, the refusal of plaintiff insured to submit to an examination did not give rise to a defense under the policy. Huggins v. Hartford Ins. Co., 650 F. Supp. 38 (E.D.N.C. 1986).

Insurer's Request for Production of Documents Must Be Specific. — In order to carry out the reasonable and relevant requirements in the statutory "production of documents" provision, the standard fire insurance policy requires the insurer's request to be specific. Chavis v. State Farm Fire & Cas. Co., 317 N.C. 683, 346 S.E.2d 496 (1986).

And Reasonable. — The statutory "production of documents" clause in the standard fire insurance policy does not expressly authorize the insurer's unlimited access to any and all of the insured's business and financial records. Rather, the language of the statutory provision assumes that the insurer's requests for documents will be reasonable and will relate to the insured property. The provision does not grant to the insurer an unlimited right to roam at will through all of the insureds' financial records, without the restriction of reasonableness and specificity. Chavis v. State Farm Fire & Cas. Co., 317 N.C. 683, 346 S.E.2d 496 (1986).

What Documents to Be Produced. — The "production of documents" provision in the statutory standard fire insurance policy only expressly provides that the insured shall produce for examination "all books of account, bills, invoices, and other vouchers." Chavis v. State Farm Fire & Cas. Co., 317 N.C. 683, 346 S.E.2d 496 (1986).

Request for Production of Documents Held Overbroad. — Release form which insurer required insureds who had suffered a fire loss to sign in connection with the statutory "production of documents" provision of their standard fire insurance policy, requesting access to "any and all records" in connection with "all banks and/or any type of lending institution" with which plaintiffs had done "any business," was unreasonably broad, and insureds were justified as a matter of law in refusing to sign this overbroad release. Chavis v. State Farm Fire & Cas. Co., 317 N.C. 683, 346 S.E.2d 496 (1986).

Refusal to Produce Documents. — Where insurer's second request for production of documents at county courthouse specifically provided that insured should produce them in "whatever status the records are presently in," and insured expressly refused to bring the requested records to either the first or second examination, maintaining that he did not have time to compile them, but admitted at trial that he need only have transported his files in "a bunch of bags" from his store to the courthouse to comply with defendant's second request for production, the evidence was insufficient to create a jury question as to the reasonableness of the time or place for the production of these documents; and the court erred in failing to grant defendant's motion for directed verdict on plaintiff's contractual claims. Moore v. North Carolina Farm Bureau Mut. Ins. Co., 82 N.C. App. 616, 347 S.E.2d 489 (1986), cert. denied, 318 N.C. 696, 351 S.E.2d 749 (1987).

Stated in Durham v. Quincy Mut. Fire Ins. Co., 311 N.C. 361, 317 S.E.2d 372 (1984).

Cited in Hawkins v. State Capital Ins. Co., 79 N.C. App. 449, 328 S.E.2d 793 (1985).

III. PROOF OF LOSS AND LIMITATION OF SUIT.

Good Cause Failure to Comply with Proof of Loss Requirements. — The failure of an insured to comply with the proof of loss requirements, if it was for "good cause" and did not prejudice the insurer, will not relieve the insurer of its obligation to pay on the policy. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

Effect of § 1-52(12). — By enacting § 1-52(12), the General Assembly intended only to include the standard fire insurance policy limitation period in the comprehensive list of actions which are generally subject to three-year periods of limitation and to provide a cross-reference between general statutory periods of limitation contained in § 1-52, and the more specific limitation provisions of the Standard Fire Insurance Policy for North Carolina set out in subsection (c) of this section. Marshburn v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

The Standard Fire Insurance Policy limitation provision, contained in § 1-52(12) and subsection (c) of this section, and reproduced in plaintiffs' policy of homeowners' insurance, constituted a limitation period "otherwise provided by statute," which precluded the applicability of § 1-52(16) to the case. Marshburn

v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

Noncompliance with Time Limitation, etc. —

A claim filed after the contractual time limitation has expired is barred, regardless of its merit, unless the insurer, by its conduct, waives or is estopped from relying upon the limitation provision of the policy. Marshburn v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

Time Limitation Provision Held Valid. — Provision of insurance policy that no suit or action on the policy for the recovery of any claim would be sustainable unless all requirements of the policy had been complied with, and unless commenced within three years next after inception of the loss, complied with the "Standard Fire Insurance Policy for North Carolina" prescribed by this section and was a valid contractual limitation, binding upon and enforceable between the parties. Marshburn v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

The phrase "inception of the loss," when used in a policy of insurance, means that the policy limitation period runs from the date of the occurrence of the event out of which the claim for recovery arose. Marshburn v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

Discovery of Damage after Running of Limitations Period. — The insured's failure or inability to discover damage resulting from the casualty insured against until after the contractual limitations period has run is immaterial and does not operate to toll or restart the limitations period. Marshburn v. Associated Indem. Corp., — N.C. App. —, 353 S.E.2d 123 (1987).

§ 58-177. Standard policy; permissible variations.

Legal Periodicals. —

For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

CASE NOTES

Legislative Intent. — The wording of the statute is unambiguous, reflecting a clear legislative intent that binders and contracts for temporary insurance be enforceable for only 60 days. Hornby v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 62 N.C. App. 419, 303 S.E.2d 332, cert. denied, 309 N.C. 461, 307 S.E.2d 364, 365 (1983).

Binders are void beyond the 60-day statutory period. Hornby v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 62 N.C. App. 419, 303 S.E.2d 332, cert. denied, 309 N.C. 461, 307 S.E.2d 364, 365 (1983).

Negligent Conduct by Insurance Company on Binder Application. — Where the evidence showed only that the insurance company negligently delayed in acting upon plaintiff's application for insurance, even if such conduct constituted a violation of subdivision (4) of this section, such a violation did not justify an award of punitive damages. Hornby v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 77 N.C. App. 475, 335 S.E.2d 335 (1985), cert. denied, 316 N.C. 193, 341 S.E.2d 570 (1986).

§ 58-177.1. Optional provisions as to loss or damage from nuclear reaction, nuclear radiation or radioactive contamination.

Insurers issuing the standard fire insurance policy pursuant to G.S. 58-176, or any permissible variation thereof, and policies issued pursuant to G.S. 58-177 and Article 12B of this Chapter, are hereby authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination,

all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination. (1963, c. 1148; 1987, c. 864, s. 7.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "Article 12B of this Chapter" for "58-126.1."

§ 58-180.2. Bar to defense of failure to render timely proof of loss.

CASE NOTES

This section was intended to benefit the insured, and not the insurer, by relieving the hardship which had resulted from the courts' strict contractual approach. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

The failure of an insured to comply with proof of loss requirements, if it was for "good cause" and did not prejudice the insurer, will not relieve the insurer of its obligation to pay on the policy. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

Insured Must Prove Good Cause. — Before the burden of showing substantial harm may be palced on the insurer, the insured must prove to the jury that his actions were for "good cause." Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

The burden of showing prejudice is on the insurance company, once the insured carries the burden of showing "good faith" in his failure to properly notify the insurance company. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

What Pleadings Required. — This section requires no more technical pleadings than the principles of notice pleading would otherwise require. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

Complaint Held Sufficient. — Plaintiff insured's complaint against insurers sufficiently alleged the provisions of this section, where he alleged that he submitted a sworn proof of loss statement which set forth that his losses were in excess of the policy limits, although he failed to include on the proof of loss statement, among other things, the actual cash value of the property at the time of the loss, the "whole loss and damage," and the "amount claimed," as plaintiff's allegation that his losses exceeded the policy limits would suggest that plaintiff believed that the omitted information was irrelevant since defendant, if liable, was obligated to pay only up to those limits if, in fact, the losses did exceed them, and thus plaintiff's allegations were sufficient to bring the issue of substantial harm before the trial court. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

Where plaintiff insured testified that he filled out proof of loss form according to the instructions he received, this was sufficient to enable a jury to find that plaintiff, at least subjectively, had good cause for failing to properly file the proof of loss statement. Therefore, lack of good cause on the part of plaintiff could not have been a basis for granting a directed verdict. Smith v. North Carolina Farm Bureau Mut. Ins. Co., 84 N.C. App. 120, 351 S.E.2d 774 (1987).

§ 58-180.3. Farmowners' and other property policies; ice, snow, or sleet damage.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Article 20.

Deposits and Bonds by Insurance Companies.

§ 58-182.1. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-182.6. Securities held by Treasurer; faith of State pledged therefor; nontaxable.

Unless a master trustee is selected by the Commissioner pursuant to G.S. 58-7.5, the securities required to be deposited by each insurance company in this Article shall be delivered for safekeeping by the Commissioner to the Treasurer of the State who shall receipt him therefor. For the securities so deposited the faith of the State is pledged that they shall be returned to the companies entitled to receive them or disposed of as herein provided for. The securities deposited by any company under this Article shall not, on account of such securities being in this State, be subjected to taxation but shall be held exclusively and solely for the protection of contract holders. (1945, c. 384; 1985, c. 666, s. 56.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, inserted "Unless a master trustee is selected by the Commissioner pursuant to G.S. 58-7.5" at the beginning of the section.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-184. Sale of deposits for payment of liabilities.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-185. Lien of policyholders; action to enforce.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-187. Return of deposits.

If such company ceases to do business in this State and its liabilities, whether fixed or contingent upon its contracts, to persons residing in this State or having policies upon property situated in this State have been satisfied or have been terminated, or have been fully reinsured, with the approval of the Commissioner, in a solvent company licensed to do an insurance business in North Carolina approved by the Commissioner, upon satisfactory evidence of this fact to the Commissioner of Insurance the State Treasurer or the trustee selected pursuant to G.S. 58-7.5 shall deliver to such company, upon the order of the Commissioner of Insurance, the securities in his possession belonging to it, or such of them as remain after paying the liabilities aforesaid. (1909, c. 923, s. 6; C.S., s. 6447; 1951, c. 781, s. 1; 1985, c. 666, s. 57.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, inserted "or the trustee selected pursuant to G.S. 58-7.5" near the end of the section.

§ 58-188. Deposit required before license granted; exception.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-188.5. Registration of bonds deposited in name of Treasurer or Commissioner.

The Commissioner of Insurance is hereby empowered, upon the written consent of any insurance company depositing with the Commissioner or the State Treasurer under any law of this State, any state, county, city, or town bonds or notes which are payable to bearer, to cause such bonds or notes to be registered as to the principal thereof in lawful books of registry kept by or in behalf of the issuing state, county, city or town, such registration to be in the name of the Treasurer of North Carolina or the Commissioner in trust for the company depositing the notes or bonds and the State of North Carolina, as their respective interest may appear, and is further empowered to require of any and all such companies the filing of written consent to such registration as a condition precedent to the right of making any such deposit or right to continue any such deposit heretofore made. (1925, c. 145, s. 2; 1945, c. 384; 1985, c. 666, s. 58.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, inserted "or Commissioner" in the catchline and inserted "or the Commissioner" near the middle of the section.

§ 58-188.6. Notation of registration; release.

Bonds or notes so registered shall bear notation of such registration on the reverse thereof, signed by the registering officer or agent, and may be released from such registration and may be transferred on such books of registry by the signature of the State Treasurer or Commissioner. (1925, c. 145, s. 3; 1945, c. 384; 1985, c. 666, s. 59.)

Effect of Amendments. —The 1985 amendment, effective July 10, 1985, inserted "or Commissioner" at the end of the section.

§ 58-188.9: Repealed by Session Laws 1987, c. 864, s. 8, effective August 14, 1987.

Article 21.

Insuring State Property, Officials and Employees.

§ 58-191. Payment of losses on basis of actual cost of restoration or replacement; rules; insurance and reinsurance; sprinkler leakage insurance.

(a) In the case of total or partial loss of any property of any State agency or institution, the Commissioner shall determine the amount of loss and certify that amount to the agency or institution concerned and to the Director of the Budget and Council of State. The Director of the Budget and Council of State may authorize transfers from the Fund to the agency or institution that suffered the loss in amounts that are necessary to pay for the actual cost of restoration or replacement of the property. In the event there is not a sufficient amount in the Fund to pay for the actual cost of restoration or replacement, the Director of the Budget and the Council of State may supplement the Fund by transferring amounts from the Contingency and Emergency Fund.

(b) The Commissioner, with the approval of the Council of State, is authorized to adopt rules necessary to carry out the purpose of this Article, which rules shall be binding on all State agencies and institutions. The Commissioner, with the approval of the Director of the Budget and the Council of State, is authorized to purchase from qualified insurers insurance or reinsurance necessary to protect the Fund against loss on any one building and its contents in excess of fifty thousand dollars ($50,000), and the premiums for this coverage shall be paid from the Fund.

(c) Upon the request of any State agency or institution, sprinkler leakage insurance shall be provided on designated property of the agency or institution that is insured by the Fund. Premiums for this coverage shall be paid by the requesting agency or institution in accordance with rates fixed by the Commissioner. Losses covered

by this insurance may be paid out of the Fund in the same manner as other losses. The Commissioner, with the approval of the Director of the Budget and the Council of State, is authorized to purchase from qualified insurers insurance or reinsurance necessary to protect the Fund against loss with respect to sprinkler leakage insurance coverage. (1945, c. 1027, s. 3; 1951, c. 802; 1959, c. 182, s. 2; 1983, c. 913, s. 7; 1985, c. 786.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted the former last sentence of the first paragraph, which read "Such funds as shall be allocated from such reserve fund shall be paid therefrom upon warrant of the State Auditor."

The 1985 amendment, effective July 18, 1985, rewrote this section.

§ 58-191.3. Professional liability insurance for officials and employees of the State.

The Commissioner of Insurance may acquire professional liability insurance covering the officers and employees of any State department, institution or agency upon the request of such State department, institution or agency. Premiums for such insurance coverage shall be paid by the requesting department, institution or agency at rates fixed by the Commissioner from funds made available to it for the purpose. The Commissioner, in placing a contract for such insurance is authorized to place such insurance through the Public Officers and Employees' Liability Insurance Commission, and shall exercise all efforts to place such insurance through the said commission prior to attempting to procure such insurance through any other source.

The Commissioner, pursuant to this section, may acquire professional liability insurance covering the officers and employees of a department, institution or agency of State government only if the coverage to be provided by such policy is coverage of claims in excess of the protection provided by Articles 31 and 31A of Chapter 143 of the General Statutes.

The purchase, by any State department, institution or agency of professional liability insurance covering the law-enforcement officers, officers or employees of such department, institution or agency shall not be construed as a waiver of any defense of sovereign immunity by such department, institution or agency. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

The payment, by any State department, institution or agency of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, institution or agency is hereby declared to be for a public purpose. (1979, c. 206, s. 1; 1987, c. 864, s. 53.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, deleted "of the Department of Administration" following "Commission" in the last sentence of the first paragraph.

§ 58-191.4. Transfer from fund for local fire protection.

Of the funds available in the cash balance of the State Property Fire Insurance Fund, the sum of one million four hundred fifty thousand dollars ($1,450,000) shall be transferred annually beginning in 1983-84 to the Office of State Budget and Management for compensating political subdivisions of the State for providing local fire protection on State-owned buildings and their contents, provided, however that beginning with the 1984-85 fiscal year if the State Treasurer makes a written finding to the Director of the Budget that the transfer for the 1984-85 fiscal year (or appropriate succeeding years) would cause financial instability in the State Property Fire Insurance Fund, then with the approval of the Director of the Budget, funds from the general fund shall supplement funds from the State Property Fire Insurance Fund that the State Treasurer certifies are available without causing financial instability so that the total State aid to local subdivisions under this section will remain at one million four hundred fifty thousand dollars ($1,450,000) for each fiscal year. The Office of State Budget and Management shall develop an equitable and uniform statewide method for distributing these funds to the State's political subdivisions. Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission. (1983, c. 761, s. 21; 1985 (Reg. Sess., 1986), c. 955, ss. 4, 5.)

Editor's Note. — Session Laws 1983, c. 761, s. 21 makes this section effective July 1, 1983.

Session Laws 1983, c. 761, s. 259, contains a severability clause.

Section 1 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "This act may be cited as the Separation of Powers Act of 1986."

Section 127 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "If any part of this act shall be declared invalid by any court, this shall not affect any other part of this act."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted "after receiving the advice of the Advisory Budget Commission" following "approval of the Director of the Budget" in the first sentence and added the last sentence.

§ 58-194.1. Liability insurance required for state-owned vehicles.

Every department, agency or institution of the State shall acquire motor vehicle liability insurance on all state-owned motor vehicles under its control. (1959, c. 1248; 1983, c. 717, s. 10.)

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, deleted the second sentence of this section, which read "A general fund department, agency or institution which does not have sufficient funds within its existing budget to pay the premiums for such insurance may, with the approval of the Advisory Budget Commission, make application to the Director of the Budget for allocation of funds for payment of premiums out of the contingent or emergency appropriation in the manner prescribed by G.S. 143-12."

§ 58-194.3. Competitive selection of payroll deduction insurance products paid for by State employees.

(a) Employee Insurance Committee. — The head of each State government employee payroll unit offering payroll deduction insurance products to employees shall appoint an Employee Insurance Committee for the following purposes:

(1) To review insurance products currently offered through payroll deduction to the State employees in the Employee Insurance Committee's payroll unit to determine if those products meet the needs and desires of employees in the Employee Insurance Committee's payroll unit.

(2) To select the types of insurance products that reflect the needs and desires of employees in the Employee Insurance Committee's payroll unit.

(3) To competitively select the best insurance products of the types determined by the Employee Insurance Committee to reflect the needs and desires of the employees of that payroll unit.

(b) Appointment of Employee Insurance Committee Members. — The members of the Employee Insurance Committee shall be appointed by the head of the payroll unit. The Committee shall consist of not less than five or more than nine individuals a majority of whom have been employed in the payroll unit for at least one year. The Committee members shall, except where necessary initially to establish the rotation herein prescribed, serve three-year terms with approximately one-third of the terms expiring annually. Committee membership make-up shall fairly represent the work force in the payroll unit and be selected without regard to any political or other affiliations. It shall be the duty of the payroll unit head to assure that the Employee Insurance Committee is completely autonomous in its selection of insurance products and insurance companies and that no member of the Employee Insurance Committee has any conflict of interest in serving on the Committee. A committee on employee benefits elected or appointed by the faculty representative body of a constituent institution of The University of North Carolina shall be deemed constituted and functioning as an employee insurance committee in accordance with this section. Any decision rendered by the Employee Insurance Committee where the autonomy of the Committee or a conflict of interest is questioned shall be subject to appeal pursuant to the Administrative Procedure Act, or in the case of departments, boards and commissions which are specifically exempt from the Administrative Procedure Act, pursuant to the appeals procedure prescribed for such department, board or commission.

All payroll units in existence on May 21, 1985, shall continue to be deemed payroll units, regardless of any subsequent consolidation of such payroll units, for purposes of the appointment of the members of the Employee Insurance Committee in order to assure such units the continuing ability to meet the needs and desires of the employees of such units by having the right to select insurance carriers and insurance products. In the event of the consolidation of a payroll unit, the head of the former payroll unit shall appoint the

members of the Committee in accordance with the provisions of this section.

(c) Payroll Deduction Slots. — Each payroll unit shall be entitled to not less than four payroll deduction slots to be used for payment of insurance premiums for products selected by the Employee Insurance Committee and offered to the employees of the payroll unit. The Employee Insurance Committee shall select only one company per payroll deduction slot. The company selected by the Employee Insurance Committee shall be permitted to sell through payroll deduction only the products specifically approved by the Employee Insurance Committee. The assignment by the Employee Insurance Committee of a payroll deduction slot shall be for a period of not less than two years unless the insurance company shall be in violation of the terms of the written agreement specified in this subsection. The insurance company awarded a payroll deduction slot shall, pursuant to a written agreement setting out the rights and duties of the insurance company, be afforded an adequate opportunity to solicit employees of the payroll unit by making such employees aware that a representative of the company will be available at a specified time and at a location convenient to the employees.

Notwithstanding any other provision of the General Statutes, once an employee has selected an insurance product for payroll deduction, that product may not be removed from payroll deduction for that employee without his or her specific written consent.

When an employee retires from State employment and payroll deduction under this section is no longer available, the insurance company may not terminate life insurance products purchased under the payroll deduction plan without the retiree's specific written consent solely because the premium is no longer deducted from payroll.

(d) Criminal Penalty. — It shall be a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than 30 days, or both for any State employee, who has supervisory authority over any member of the Employee Insurance Committee, to attempt to influence the autonomy of any Employee Insurance Committee either in the appointment of members to such Committee or in the operation of such Committee. The Commissioner of Insurance shall have the authority to investigate complaints alleging acts subject to the criminal penalty and shall report his findings to the Attorney General of North Carolina. (1985, c. 213, s. 1; 1985 (Reg. Sess., 1986), c. 1013, s. 15; 1987, c. 752, s. 12; c. 864, s. 92.)

Editor's Note. — Session Laws 1985, c. 213, s. 2 makes this section effective on ratification. The act was ratified May 21, 1985.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective May 21, 1985, added the second paragraph of subsection (c).

Session Laws 1987, c. 752, s. 12, effective August 7, 1987, added the last sentence of subsection (c).

Session Laws 1987, c. 864, s. 92, effective August 14, 1987, added the last paragraph of subsection (b).

OPINIONS OF ATTORNEY GENERAL

Adoption of Rules. — When Employee Insurance Committees establish procedures that affect the rights or procedures of others, they must be codified as rules. Should the committees elect to operate by the procedural process established in the enabling statutes, no rule adoptions are necessary. See opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 56 N.C.A.G. 25 (1986).

Employee Insurance Committees have rule-making and limited quasi-judicial powers pursuant to § 58-194.3(b) and are "agencies" within the meaning of § 150B-2(1). See opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 56 N.C.A.G. 25 (1986).

SUBCHAPTER IV. LIFE INSURANCE.

ARTICLE 22.

General Regulations of Business.

§ 58-197. Soliciting agent represents the company.

CASE NOTES

Legislative Intent. — This section was enacted by the General Assembly as a protective measure for consumers of insurance services. Its import is obviously to expand the class of persons capable of binding insurers to enforceable insurance obligations, and to prevent insurers who obtain consideration from persons solicited on their behalf, from relying on the purportedly ultra vires actions of their agents to deny liability to beneficiaries. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 63 N.C. App. 424, 305 S.E.2d 568 (1983), affirmed, 311 N.C. 62, 316 S.E.2d 256 (1984).

This section establishes a conclusive presumption of an agency relationship once "solicitation" on the part of the agent is found. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 63 N.C. App. 424, 305 S.E.2d 568 (1983), affirmed, 311 N.C. 62, 316 S.E.2d 256 (1984).

"Solicit" defined. — The word "solicit" is not defined in § 58-2; nor does the term appear to have been authoritatively construed in the reported decisions of the appellate courts of this State. Its meaning must be discerned, therefore, by application of fundamental principles of statutory construction. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 63 N.C. App. 424, 305 S.E.2d 568 (1983), affirmed, 311 N.C. 62, 316 S.E.2d 256 (1984).

The term "solicit" must be interpreted to further the intent of the Legislature and, absent a special definition, must be given its ordinary meaning. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 311 N.C. 62, 316 S.E.2d 256 (1984).

Where there is evidence that a person actively participated in the placement of a life insurance policy by approaching corporate officers with information about the policy, obtaining and completing blank applications for the policy, collecting premiums, distributing policies, and collecting a commission, there is ample evidence that the person has "solicited" an application for insurance upon the life of another within the meaning of this section. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 311 N.C. 62, 316 S.E.2d 256 (1984).

Broker as Agent of Insurer. — Where a broker "solicits" within the meaning of this section, he is deemed an agent of the insurer in situations covered by that statute. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 311 N.C. 62, 316 S.E.2d 256 (1984).

When Knowledge of Agent, etc. — In accord with original. See McCrimmon v. North Carolina Mut. Life Ins. Co., 69 N.C. App. 683, 317 S.E.2d

709, cert. denied, 312 N.C. 84, 322 S.E.2d 175 (1984).

Responsibility of Insured, etc. — When the agent of the insurance company answers questions for the applicant on an application for insurance, without the applicant having reason to know what answers the agent is supplying, the insurance company will be equitably estopped to rely on the falsity or inaccuracy supplied by its own agent in any effort to defeat liability on the policy. Northern Nat'l Life Ins. Co. v. Lacy J. Miller Mach. Co., 63 N.C. App. 424, 305 S.E.2d 568 (1983), affirmed, 311 N.C. 62, 316 S.E.2d 256 (1984).

If an application for insurance containing material misrepresentations is filled in by the agent before being signed by the applicant, these are material misrepresentations of the applicant which bar recovery. McCrimmon v. North Carolina Mut. Life Ins. Co., 69 N.C. App. 683, 317 S.E.2d 709, cert. denied, 312 N.C. 84, 322 S.E.2d 175 (1984).

§ 58-201.1. Standard Valuation Law.

(d) Except as otherwise provided in subsections (d-1) and (g), reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (1) and (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(2) A net one year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefits are provided in the first year for such excess and which provides an endowment benefit or a cash surrender value of a combination thereof in an amount greater than such excess premium, the reserve according to the Commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (g), be the greater of the reserve as of such policy anniversary calculated as described in the first paragraph of this subsection and the reserve as of such policy anniversary calculated as described in that paragraph, but with (i) the value defined in subparagraph (1) of that paragraph being re-

duced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subdivisions (2) and (4) of subsection (c) shall be used.

Reserves according to the Commissioner's reserve valuation method for: (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(1945, c. 379; 1959, c. 484, s. 1; 1961, c. 255, ss. 1-3; 1963, c. 791, ss. 1, 2; 1975, c. 603, s. 1; 1979, c. 409, ss. 1-6; 1981, c. 761, ss. 1-5; 1985, c. 666, s. 46.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, substituted "as described in the first paragraph of this subsection" for "as described in the preceding paragraph" in the first sentence of the second paragraph of subsection (d) and substituted "value defined in subparagraph (1)" for "value defined in subparagraph (2)" in clause (i) of that sentence.

§ 58-205.3. Interest payments on death benefits.

(a) Each insurer admitted to transact insurance in this State which, without the written consent of the beneficiary, fails or refuses to pay the death proceeds or death benefits in accordance with the terms of any policy of life or accident insurance issued by it in this State within 30 days after receipt of satisfactory proof of loss because of the death, whether accidental or otherwise, of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of such 30-day period. As used in this subsection, the phrase "satisfactory proof of loss because of the death" includes, but is not limited to, a certified copy of the death certificate; or a written statement by the attending physician at the time of death that contains the following information: (i) the name and address of the physician, who must be duly licensed to practice medicine in the United States; (ii) the name of the de-

ceased; (iii) the date, time, and place of the death; and (iv) the immediate cause of the death.

(c) Nothing contained herein shall be construed to allow any insurer admitted to transact insurance in this State to withhold payment of money payable under a life or accident insurance policy issued in this State to any beneficiary for a period longer than reasonably necessary to determine whether benefits are payable and thereafter to transmit such payment.

(1977, c. 395, s. 1; 1983, c. 749; 1985, c. 666, s. 45.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, added the last sentence of subsection (a).

The 1985 amendment, effective July 10, 1985, deleted "life" preceding "insurance" following "Each insurer admitted to transact" at the beginning of subsection (a) and following "allow any insurer admitted to transact" near the beginning of subsection (c).

CASE NOTES

Applied in Fedoronko v. American Defender Life Ins. Co., 69 N.C. App. 655, 318 S.E.2d 244 (1984).

§ 58-210. "Group life insurance" defined.

No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The term "employer" as used herein may be deemed to include any county, municipality, or the proper officers, as such, of any unincorporated municipality or any department, division, agency, instrumentality or subdivision of a county, unincorporated municipality or municipality. In all cases where counties, municipalities or unincorporated municipalities or any officer, agent,

division, subdivision or agency of the same have heretofore entered into contracts and purchased group life insurance for their employees, such transactions, contracts and insurance and the purchase of the same is hereby approved, authorized and validated.

b. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least 10 employees at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustee.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and to the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.

b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of

individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured.

d, e. Repealed by Session Laws 1975, c. 660, s. 4.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least 25 members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

(4) A policy issued to the trustee of a fund established by two or more employers in the same industry or kind of business or by two or more labor unions, which trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to memberships in the unions, or to both. The policy may provide that the term "employees" shall include

the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustee or the employees of the trustee, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

b. The premium for the policy shall be paid by the trustee wholly from funds contributed by the participating employer or labor union, or partly from funds contributed by the participating employer or labor union and partly from funds contributed by the insured persons. In no event shall the funds contributed by the participating employer or labor union represent less than twenty-five percent (25%) of the total cost of the insurance with respect to the insured persons of a participating employer or labor union.

If none of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for the insurance, all eligible employees of that particular participating employer or labor union must be insured, or all except any as to whom evidence of insurability is not satisfactory to the insurer. Insurance may not be placed into effect for employees of a participating employer or labor union if less than twenty-five percent (25%) of the total cost is paid by the participating employer or labor union.

If part of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for their insurance, coverage may be placed in force on employees of a participating employer or on members of a participating labor union provided the group is structured on an actuarially sound basis.

c. The policy must cover at least 100 persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

(5) A policy issued to an association of persons having a common professional or business interest, which association shall be deemed the policyholder, to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:

a. Such association shall have had an active existence for at least two years immediately preceding the purchase of such insurance, was formed for purposes other than procuring insurance and does not derive its funds principally from contributions of insured members toward the payment of premiums for the insurance.

b. The members eligible for insurance under the policy shall be all of the members of the association or all of any class or classes thereof determined by conditions

pertaining to their employment, or the membership in the association, or both. The policy may provide that the term "members" shall include the employees of members, if their duties are principally connected with the member's business or profession.

c. The premium for the policy shall be paid by the policyholder, either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance, nor if the Commissioner finds that the rate of such contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

d. The policy must cover at least 25 members at date of issue.

e. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the association.

(1925, c. 58, s. 1; 1931, c. 328; 1943, c. 597, s. 1; 1947, c. 834; 1951, c. 800; 1955, c. 1280; 1957, c. 998; 1959, c. 287; 1965, c. 869; 1971, c. 516; 1973, c. 249; 1975, c. 660, s. 4; 1977, c. 192, ss. 1-4; c. 835; 1987, c. 752, ss. 14-18.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, rewrote the third sentence of subdivision (1)b, rewrote the second sentence of subdivision (2)b, rewrote the third sentence of subdivision (3)b, rewrote the third paragraph of subdivision (4)b, and rewrote the third sentence of subdivision (5)c.

§ 58-213. Exemption from execution.

Legal Periodicals. — For article analyzing North Carolina's exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

§ 58-213.1. Contestability after reinstatement.

A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance. The reinstatement application shall be deemed to be a part of the policy whether or not attached thereto. (1987, c. 752, s. 13.)

Editor's Note. — Session Laws 1987, c. 752, s. 21 makes this section effective upon ratification. The act was ratified August 7, 1987.

§§ 58-213.2 to 58-213.5: Reserved for future codification purposes.

Article 22B.

Regulation of Interest Rates on Life Insurance Policy Loans.

§ 58-213.18. Purpose.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Article 24A.

Mutual Burial Associations.

§§ 58-241.6 to 58-241.34: Recodified as G.S. 143B-472 to 143B-472.28, effective August 14, 1987.

SUBCHAPTER V. AUTOMOBILE INSURANCE.

Article 25A.

North Carolina Motor Vehicle Reinsurance Facility.

§ 58-248.26. Definitions.

As used in this Article:

(6) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers).

(7) "Motor vehicle insurance" means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including

death and property damage and includes medical payments and uninsured motorist coverages.

With respect to motor carriers who are subject to the financial responsibility requirements established under the Motor Carrier Act of 1980, the term, "motor vehicle insurance" includes coverage with respect to environmental restoration. As used in this subsection the term, "environmental restoration" means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish, and wildlife.

(1973, c. 818, s. 1; 1977, c. 828, s. 10; 1981, c. 776, s. 1; 1985, c. 666, s. 48.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, rewrote subdivision (6), defining "Motor vehicle," and deleted "as defined in Article 9A of Chapter 20 of the General Statutes of North Carolina" following "maintenance or use of a motor vehicle" in the first paragraph of subdivision (7).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For 1984 survey, "Application of the Tate Test to Notice Requirements in Reinsurance Contracts," see 63 N.C.L. Rev. 1240 (1985).

CASE NOTES

Effect on § 20-310(f)(5). — While the legislature effectively abolished the North Carolina Automobile Insurance Plan with passage of this article, the Reinsurance Facility Act, notification of the Plan under § 20-310(f)(5) was not specifically repealed until 1985, by Session Laws 1985, c. 666, s. 67. However, since the legislature repealed the former Plan system, § 20-310(f)(5) was also thereby repealed by implication, to the extent that it required notification of the defunct Plan. Coleman v. Interstate Cas. Ins. Co., — N.C. App. —, 352 S.E.2d 249 (1987).

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-248.27. North Carolina Motor Vehicle Reinsurance Facility; creation; membership.

There is created a nonprofit unincorporated legal entity to be known as the North Carolina Motor Vehicle Reinsurance Facility consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Facility and shall be bound by the rules of operation thereof as provided for in this Article and as promulgated by the Board of Governors. No company may withdraw from membership in the Facility unless it ceases to write motor vehicle insurance in this

State or ceases to be licensed to write such insurance. (1973, c. 818, s. 1; 1983, c. 416, s. 6.)

Effect of Amendments. — The 1983 amendment, effective June 2, 1983, substituted "North Carolina Motor Vehicle Reinsurance Facility" for "North Carolina Reinsurance Facility" in the first sentence.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's ratemaking authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Applied in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-248.28. Obligations after termination of membership.

CASE NOTES

Applied in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-248.29. Insolvency.

CASE NOTES

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-248.31. General obligations of insurers.

CASE NOTES

Cited in Coleman v. Interstate Cas. Ins. Co., — N.C. App. —, 352 S.E.2d 249 (1987).

§ 58-248.33. (For effective date see note) The Facility; functions; administration.

(a) The operation of the Facility shall assure the availability of motor vehicle insurance to any eligible risk and the Facility shall accept all placements made in accordance with this Article, the plan of operation adopted pursuant thereto, and any amendments to either.

(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

§ 58-248.33 is set out twice. See notes for effective dates.

a. Bodily injury liability: twenty-five thousand dollars ($25,000) each person, fifty thousand dollars ($50,000) each accident;

b. Property damage liability: ten thousand dollars ($10,000) each person;

c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;

d. Uninsured motorist: twenty-five thousand dollars ($25,000) each person; fifty thousand dollars ($50,000) each accident for bodily injury; ten thousand dollars ($10,000) each accident property damage (one hundred dollars ($100.00) deductible);

e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one hundred thousand dollars ($100,000) each person and three hundred thousand dollars ($300,000) each accident for bodily injury liability;

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and ten thousand dollars ($10,000) for property damage (one hundred dollars ($100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-248.33(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to "all other" types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau.

(c) The Facility shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses are adjusted and to effect settlement where settlement is appropriate.

(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the

§ 58-248.33 is set out twice. See notes for effective dates.

Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other nonstock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by the Carolinas Association of Professional Insurance Agents. The initial term of office of said Board members shall be two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department of Insurance and who are appointed by the Governor to serve at his pleasure.

(e) The Commissioner and member companies shall provide for a Board of Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filed in accordance with this Article within such time, then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board. After the Board of Governors have been selected it shall then elect from its membership a chairman and shall then meet thereafter as often as the chairman shall require or at the request of three members of the Board of Governors. The chairman shall retain the right to vote on all issues. Five members of the Board of Governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive years.

(f) The Board of Governors shall have full power and administrative responsibility for the operation of the Facility. Such administrative responsibility shall include but not be limited to:

(1) Proper establishment and implementation of the Facility.

(2) Employment of a manager who shall be responsible for the continuous operation of the Facility and such other employees, officers and committees as it deems necessary.

(3) Provision of appropriate housing and equipment to assure the efficient operation of the Facility.

(4) Promulgation of reasonable rules and regulations for the administration and operation of the Facility and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.

§ 58-248.33 is set out twice. See notes for effective dates.

(g) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

(1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.

(2) To receive and record cessions.

(3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the plan of operation.

(4) To contract for goods and services from others to assure the efficient operation of the Facility.

(5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.

(6) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as determined by the Commissioner of Insurance within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. Such standard shall be:

a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;

b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars ($20,000) from motor vehicle insurance;

c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of application was 200 or more;

d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;

e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

With respect to business produced by designated agents, adequate provision shall be made by the Facility to assure that such business is rated using Facility rates. All business produced by designated agents may be ceded to the Facility, except designated agents appointed prior to September 1, 1987, may place liability insurance policies with a voluntary carrier, provided that all policies written by the voluntary carrier are retained by the voluntary carrier unless ceded to the Facility using Facility rates. Designated agents must provide the Facility with a list of such

§ 58-248.33 is set out twice. See notes for effective dates.

policies written by the voluntary carrier at least annually, or as requested by the Facility, on a form approved by the Facility. If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agent to write directly on behalf of the Facility. However, for this purpose the Facility does not act as an insurer, but acts only as the statutory agent of all of the members of the Facility, which shall be bound on risks written by the Facility's appointed agent. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through said servicing carriers shall be rated using Facility rates. All business produced by Facility agents may be ceded to the Facility.

The Commissioner shall require, as a condition precedent to the issuance, renewal, or continuation of a resident agent's license to any designated agent to act for the company appointing such designated agent under contract with the Facility, that the designated agent file and thereafter maintain in force while so licensed a bond in favor of the State of North Carolina executed by an unauthorized corporate surety approved by the Commissioner, cash, mortgage on real property, or other securities approved by the Commissioner, in the amount of ten thousand dollars ($10,000) for the use of aggrieved persons. Such bond, cash, mortgage, or other securities shall be conditioned on the accounting by the designated agent (i) to any person requesting the designated agent to obtain motor vehicle insurance for moneys or premiums collected in connection therewith, and (ii) to the company providing coverage with respect to any such moneys or premiums under contract with the Facility. Any such bond shall remain in force until the surety is released from liability by the Commissioner, or until the bond is cancelled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon 30 days' advance notice in writing filed with the Commissioner.

No agent may be designated under this subdivision to any insurer that does not actively write voluntary market business.

(7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.

(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business which cannot be recouped pursuant to G.S. 58-248.34(f) or which cannot be recouped or allocated under G.S. 58-248.41, and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.

§ 58-248.33 is set out twice. See notes for effective dates.

(9) To receive or distribute all sums required by the operation of the Facility.

(10) To accept all risks submitted in accordance with this Article.

(11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.

(12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article.

(h) Each member company shall authorize the Facility to audit that part of the company's business which is written subject to the Facility in a manner and time prescribed by the Board of Governors.

(i) The Board of Governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the Board of Governors.

(j) There shall be furnished to each member an annual report of the operation of the Facility in such form and detail as may be determined by the Board of Governors.

(k) Each member shall furnish statistics in connection with insurance subject to the Facility as may be required by the Facility. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums charged, expenses and losses.

(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks" as herein defined. For the purpose of this Article, a "clean risk" shall be any owner of a motor vehicle classified as a private passenger non-fleet motor vehicle as defined under Article 13C of this Chapter if the owner and the principal operator and each licensed operator in the owner's household have two years' driving experience and if neither the owner nor any member of his household nor the principal operator had had any chargeable accident or any conviction for a moving traffic violation pursuant to the subclassification plan established by the provisions of G.S. 58-30.4, during the three-year period immediately preceding the date of application for motor vehicle insurance or the date of preparation for a renewal motor vehicle insurance policy. Such filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-131.42 of this Chapter. Said

§ 58-248.33 is set out twice. See notes for effective dates.

order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks", as defined above, shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments pursuant to G.S. 58-248.34(f) or allocated pursuant to G.S. 58-248.41. Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive.

(m) In addition to annual premiums, the rules of the Facility shall allow semiannual and quarterly premium terms.

(1973, c. 818, s. 1; 1977, c. 710; c. 828, ss. 14-19; 1977, 2nd Sess., c. 1135; 1979, c. 676, ss. 1, 2; 1981, c. 776, ss. 2, 3; c. 776, ss. 2, 3; 1983, c. 416, ss. 3, 4; c. 690; 1985, c. 666, s. 49; 1985 (Reg. Sess., 1986), c. 1027, ss. 7, 19, 33, 43; 1987, c. 864, ss. 3, 4(1), 15.)

Section Set Out Twice. — The section above is effective until the amendment by Session Laws 1987, c. 869, s. 4(1) becomes effective. For the section as amended effective at that time, see the following section, also numbered 58-248.33.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. —

The first 1983 amendment, effective June 2, 1983, substituted "North Carolina Rate Bureau" for "North Carolina Automobile Rate Administrative Office" at the end of subdivision (b)(3) and substituted "Carolinas Association of Professional Insurance Agents" for "Carolinas Association of Mutual Insurance Agents, North Carolina Division" at the end of the eighth sentence of subsection (d).

The second 1983 amendment, effective Oct. 1, 1983, added the last paragraph in subdivision (g)(6).

The 1985 amendment, effective July 10, 1985, substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" in paragraph (b)(1)d and in subdivision (b)(2).

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 7, effective July 16, 1986, added the last sentence of subsection (d).

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 19, effective September 1, 1986, rewrote paragraph (b)(1)e.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 33, effective July 16, 1986, added the last paragraph of subdivision (g)(6).

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 43, effective October 1, 1986, added languages relating to underinsured motorist coverage in subdivision (b)(2).

Session Laws 1987, c. 869, ss. 3, 4(2) and 15, effective August 14, 1987, rewrote the second paragraph of subdivision (g)(6), inserted "or which cannot be recouped or allocated under G.S. 58-248.41" following "G.S. 58-248.34(f)" in subsection (g)(8), and inserted "or allocated pursuant to G.S. 58-248.41" following "58-248.34(f)" in the twelfth sentence in subsection (l).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Applied in Unigard Mut. Ins. Co. v. Ingram, 71 N.C. App. 725, 323 S.E.2d 442 (1984).

Stated in North Carolina Reinsurance Facility v. North Carolina Ins. Guar. Ass'n, 67 N.C. App. 359, 313 S.E.2d 253 (1984).

§ 58-248.33 is set out twice. See notes for effective dates.

§ 58-248.33. (For effective date see note) The Facility; functions; administration.

(a) The operation of the Facility shall assure the availability of motor vehicle insurance to any eligible risk and the Facility shall accept all placements made in accordance with this Article, the plan of operation adopted pursuant thereto, and any amendments to either.

(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

a. Bodily injury liability: twenty-five thousand dollars ($25,000) each person, fifty thousand dollars ($50,000) each accident;

b. Property damage liability: ten thousand dollars ($10,000) each person;

c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;

d. Uninsured motorist: twenty-five thousand dollars ($25,000) each person; fifty thousand dollars ($50,000) each accident for bodily injury; ten thousand dollars ($10,000) each accident property damage (one hundred dollars ($100.00) deductible);

e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one hundred thousand dollars ($100,000) each person and three hundred thousand dollars ($300,000) each accident for bodily injury liability;

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and ten thousand dollars ($10,000) for property damage (one hundred dollars ($100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-248.33(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be

§ 58-248.33 is set out twice. See notes for effective dates.

available to "all other" types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau.

(c) The Facility shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses are adjusted and to effect settlement where settlement is appropriate.

(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other nonstock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by the Carolinas Association of Professional Insurance Agents. The initial term of office of said Board members shall be two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department of Insurance and who are appointed by the Governor to serve at his pleasure.

(e) The Commissioner and member companies shall provide for a Board of Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filled in accordance with this Article within such time, then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board. After the Board of Governors have been selected it shall then elect from its membership a chairman and shall then meet thereafter as often as the chairman shall require or at the request of three members of the Board of Governors. The chairman shall retain the right to vote on all issues. Five members of the Board of Governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive years.

§ 58-248.33 is set out twice. See notes for effective dates.

(f) The Board of Governors shall have full power and administrative responsibility for the operation of the Facility. Such administrative responsibility shall include but not be limited to:

(1) Proper establishment and implementation of the Facility.

(2) Employment of a manager who shall be responsible for the continuous operation of the Facility and such other employees, officers and committees as it deems necessary.

(3) Provision for appropriate housing and equipment to assure the efficient operation of the Facility.

(4) Promulgation of reasonable rules and regulations for the administration and operation of the Facility and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.

(g) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

(1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.

(2) To receive and record cessions.

(3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the plan of operation.

(4) To contract for goods and services from others to assure the efficient operation of the Facility.

(5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.

(6) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as determined by the Commissioner of Insurance within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. Such standard shall be:

a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;

b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars ($20,000) from motor vehicle insurance;

c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of application was 200 or more;

§ 58-248.33 is set out twice. See notes for effective dates.

d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;

e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

With respect to business produced by designated agents, adequate provision shall be made by the Facility to assure that such business is rated using Facility rates. All business produced by designated agents may be ceded to the Facility, except designated agents appointed prior to September 1, 1987, may place liability insurance policies with a voluntary carrier, provided that all policies written by the voluntary carrier are retained by the voluntary carrier unless ceded to the Facility using Facility rates. Designated agents must provide the Facility with a list of such policies written by the voluntary carrier at least annually, or as requested by the Facility, on a form approved by the Facility. If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agent to write directly on behalf of the Facility. However, for this purpose the Facility does not act as an insurer, but acts only as the statutory agent of all of the members of the Facility, which shall be bound on risks written by the Facility's appointed agent. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through said servicing carriers shall be rated using Facility rates. All business produced by Facility agents may be ceded to the Facility.

The Commissioner shall require, as a condition precedent to the issuance, renewal, or continuation of a resident agent's license to any designated agent to act for the company appointing such designated agent under contract with the Facility, that the designated agent file and thereafter maintain in force while so licensed a bond in favor of the State of North Carolina executed by an unauthorized corporate surety approved by the Commissioner, cash, mortgage on real property, or other securities approved by the Commissioner, in the amount of ten thousand dollars ($10,000) for the use of aggrieved persons. Such bond, cash, mortgage, or other securities shall be conditioned on the accounting by the designated agent (i) to any person requesting the designated agent to obtain motor vehicle insurance for moneys or premiums collected in connection therewith, and (ii) to the company providing coverage with respect to any such moneys or premiums under contract with the Facility. Any such bond shall remain in force until the surety is released from liability by the Commissioner, or until the bond is cancelled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon 30 days' advance notice in writing filed with the Commissioner.

§ 58-248.33 is set out twice. See notes for effective dates.

No agent may be designated under this subdivision to any insurer that does not actively write voluntary market business.

(7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.

(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business which cannot be recouped pursuant to G.S. 58-248.34(f) or which cannot be recouped or allocated under G.S. 58-248.41, and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.

(9) To receive or distribute all sums required by the operation of the Facility.

(10) To accept all risks submitted in accordance with this Article.

(11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.

(12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article.

(h) Each member company shall authorize the Facility to audit that part of the company's business which is written subject to the Facility in a manner and time prescribed by the Board of Governors.

(i) The Board of Governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the Board of Governors.

(j) There shall be furnished to each member an annual report of the operation of the Facility in such form and detail as may be determined by the Board of Governors.

(k) Each member shall furnish statistics in connection with insurance subject to the Facility as may be required by the Facility. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums charged, expenses and losses.

(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks" as herein defined. For the purpose of this Article, a "clean risk" shall be any owner of a motor vehicle classified as a private passenger non-fleet motor vehicle as defined under Article 13C of this Chapter if the owner and the principal operator and each licensed operator in the

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owner's household have two years' driving experience and if neither the owner nor any member of his household nor the principal operator had had any chargeable accident or any conviction for a moving traffic violation pursuant to the subclassification plan established by the provisions of G.S. 58-124.31, during the three-year period immediately preceding the date of application for motor vehicle insurance or the date of preparation for a renewal motor vehicle insurance policy. Such filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-131.42 of this Chapter. Said order shall not affect any contract or policy made or issued prior to the the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks", as defined above, shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments pursuant to G.S. 58-248.34(f) or allocated pursuant to G.S. 58-248.41. Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive.

(m) In addition to annual premiums, the rules of the Facility shall allow semiannual and quarterly premium terms.

(1973, c. 818, s. 1; 1977, c. 710; c. 828, ss. 14-19; 1977, 2nd Sess., c. 1135; 1979, c. 676, ss. 1, 2; 1981, c. 776, ss. 2, 3; c. 776, ss. 2, 3; 1983, c. 416, ss. 3, 4; c. 690; 1985, c. 666, s. 49; 1985 (Reg. Sess., 1986), c. 1027, ss. 7, 19, 33, 43; 1987, c. 864, ss. 3, 4(1), (2), 15.)

Section Set Out Twice. — The section above is effective six months after approval of a revised subclassification plan by the Commissioner of Insurance. See the Editor's Note below. For this section as in effect until that time, see the preceding section, also numbered 58-248.33.

Editor's Note. — Session Laws 1987, c. 869, s. 20 makes the amendment by s. 4(1) of the act effective six months after the date the revised subclassification plan is approved by the Commissioner of Insurance as provided in s. 17 of the act.

Session Laws 1987, c. 869, s. 17 provides: "The North Carolina Rate Bureau shall file in accordance with G.S. 58-124.31 a revised subclassification plan to reflect the provisions of this act. The Bureau shall make the filing no later than February 1, 1988, and such plan shall become effective six months after the date the plan is approved by the Commissioner. Such revised plan shall apply only to new and renewal nonfleet private passenger motor vehicle insurance policies written on and after the effective date of the plan. With respect to any moving traffic violations that occur before the effective date of the plan, the surcharge levied under G.S. 58-248.34(f) shall be determined by the revised subclassification plan. With respect to at fault accidents that occur before the effective date of the plan, the premium surcharges under the plan

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shall be determined by the subclassification plan in effect at the time such at fault accidents occur."

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 1987, c. 869, ss. 3, 4(2) and 15, effective August 14, 1987, rewrote the second paragraph of subdivision (g)(6), inserted "or which cannot be recouped or allocated under G.S. 58-248.41" following "G.S. 58-248.34(f)" in subsection (g)(8), and inserted "or allocated pursuant to G.S. 58-248.41" following "58-248.34(f)" in the twelfth sentence in subsection (l).

Session Laws 1987, c. 869, s. 4(1), substituted "58-124.31" for "58-30.4" in the third sentence of subsection (l). For the effective date of this amendment, see the Editor's Note above.

§ 58-248.34. (For effective date see note) Plan of operation.

(a) Within 60 days after the initial organizational meeting, the Facility shall submit to the Commissioner, for his approval, a proposed plan of operation, consistent with the provisions of this Article, which shall provide for economical, fair and nondiscriminating administration and for the prompt and efficient provision of motor vehicle insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period, then the Commissioner of Insurance shall formulate and place into effect a plan consistent with the provisions of this Article.

(b) The plan of operation, unless sooner approved in writing, shall be deemed to meet the requirements of the Article if it is not disapproved by order of the Commissioner within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed plan of operation the Commissioner shall notify the Facility in what respect the plan of operation fails to meet the specific requirements of this Article. The Facility shall, within 30 days thereafter, submit for his approval a revised plan of operation which meets the specific requirements of this Article. The Facility shall, within 30 days thereafter, submit for his approval a revised plan of operation which meets the specific requirements of this Article. In the event the Facility fails to submit a revised plan of operation which meets the specific requirements of this Article within the aforesaid 30-day period, the Commissioner of Insurance shall enter an order accordingly and shall immediately thereafter formulate and place into effect a plan consistent with the provisions of this Article.

(c) Any revision of the proposed plan of operation or any subsequent amendments to an approved plan of operation shall be subject to approval or disapproval by the Commissioner in the manner herein provided in subsection (b) with respect to the initial plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision or amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Facil-

§ 58-248.34 is set out twice. See notes for effective dates.

ity, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members if necessary to defray losses and expenses, the distribution of gains to defray losses incurred since the effective date hereof and then to persons reinsured by the Facility, the recoupment of losses sustained by the Facility, which losses may be recouped by equitable pro rata assessment of member companies, the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility, and the procedure by which reinsurance shall be accepted by the Facility; and shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business.

(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, commence recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. Such surcharge shall be a percentage of premium adopted by the Board of Governors of the Facility. Provided, however, that recoupment of losses sustained by the Facility since September 1, 1977, with respect to nonfleet private passenger motor vehicles may be recouped only by surcharging policies (i) that are subject to the classification plan promulgated pursuant to G.S. 58-30.4 and (ii) to which one or more driving record points have been assigned pursuant to said plan. If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility on a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. Except as hereinafter provided, the amount of recoupment shall not be considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt and implement a plan for compensation of agents of Facility members when recoupment surcharges are imposed; such compensation shall not exceed the compensation or commission rate normally paid to the agent for the issuance or renewal of the automobile liability policy issued through the North Carolina Reinsurance Facility affected by such surcharge; provided, however, that the surcharge provided for in this section shall include an amount necessary to recover the amount of the assessment to mem-

§ 58-248.34 is set out twice. See notes for effective dates.

ber companies and the compensation paid by each member, pursuant to this section, to agents.

(g) The plan of operation shall provide that all investment income from the premium on business reinsured by the Facility shall be retained by or paid over to the Facility. In determining the cost of operation of the Facility, all investment income shall be taken into consideration.

(h) The plan of operation shall provide for audit of the annual statement of the Facility by independent auditor approved by the Legislative Services Commission.

(i) The Facility shall file with the Commissioner revisions in the Facility plan of operation for his approval or modification. Such revisions shall be made for the purpose of revising the classification and rating plans for other than nonfleet private passenger motor vehicle insurance ceded to the Facility. (1973, c. 818, s. 1; 1975, c. 19, s. 18; 1977, c. 828, ss. 20, 21; 1981, c. 590; c. 916, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 34; 1987, c. 869, s. 5(1).)

Section Set Out Twice. — The section above is effective until the amendments by Session Laws 1987, c. 869, ss. 5(2) and 5(3) become effective. For the section as amended effective at that time, see the following section, also numbered § 58-248.34.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, added subsection (i).

Session Laws 1987, c. 869, s. 5(1), effective August 14, 1987, substituted "a" for "an identifiable" in the first sentence of subsection (f).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's ratemaking authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-248.34. (For effective date see note) Plan of operation.

(a) Within 60 days after the initial organizational meeting, the Facility shall submit to the Commissioner, for his approval, a proposed plan of operation, consistent with the provisions of this Article, which shall provide for economical, fair and nondiscriminating administration and for the prompt and efficient provision of motor vehicle insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period, then the Commissioner of Insurance shall formulate and place into effect a plan consistent with the provisions of this Article.

(b) The plan of operation, unless sooner approved in writing, shall be deemed to meet the requirements of the Article if it is not disapproved by order of the Commissioner within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed plan of operation the Commissioner shall notify the Facility in what respect the plan of operation fails to meet the specific requirements of this Article. The Facility shall, within 30 days thereafter, submit for his approval a revised plan of operation which meets the specific requirements of this Article. In the event the Facility fails to submit a revised plan of operation which meets the specific requirements of this Article within the aforesaid 30-day period, the Commissioner of Insurance shall enter an order accord-

§ 58-248.34 is set out twice. See notes for effective dates.

ingly and shall immediately thereafter formulate and place into effect a plan consistent with the provisions of this Article.

(c) Any revision of the proposed plan of operation or any subsequent amendments to an approved plan of operation shall be subject to approval or disapproval by the Commissioner in the manner herein provided in subsection (b) with respect to the initial plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision or amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Facility, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members if necessary to defray losses and expenses, the distribution of gains to defray losses incurred since the effective date hereof and then to persons reinsured by the Facility, the recoupment of losses sustained by the Facility, which losses may be recouped by equitable pro rata assessment of member companies, the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility, and the procedure by which reinsurance shall be accepted by the Facility; and shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business.

(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, commence recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. Such surcharge shall be a percentage of premium adopted by the Board of Governors of the Facility. Provided, however, that recoupment of losses sustained by the Facility since September 1, 1977, with respect to nonfleet private passenger motor vehicles may be recouped only by surcharging policies (i) that are subject to the classification plan promulgated pursuant to G.S. 58-124.31 and (ii) to which one or more driving

§ 58-248.34 is set out twice. See notes for effective dates.

record points have been assigned pursuant to said plan, subject to the provisions of G.S. 58-124.33. If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility on a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. Except as hereinafter provided, the amount of recoupment shall not be considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt and implement a plan for compensation of agents of Facility members when recoupment surcharges are imposed; such compensation shall not exceed the compensation or commission rate normally paid to the agent for the issuance or renewal of the automobile liability policy issued through the North Carolina Reinsurance Facility affected by such surcharge; provided, however, that the surcharge provided for in this section shall include an amount necessary to recover the amount of the assessment to member companies and the compensation paid by each member, pursuant to this section, to agents.

(g) The plan of operation shall provide that all investment income from the premium on business reinsured by the Facility shall be retained by or paid over to the Facility. In determining the cost of operation of the Facility, all investment income shall be taken into consideration.

(h) The plan of operation shall provide for audit of the annual statement of the Facility by independent auditor approved by the Legislative Services Commission.

(i) The Facility shall file with the Commissioner revisions in the Facility plan of operation for his approval or modification. Such revisions shall be made for the purpose of revising the classification and rating plans for other than nonfleet private passenger motor vehicle insurance ceded to the Facility. (1973, c. 818, s. 1; 1975, c. 19, s. 18; 1977, c. 828, ss. 20, 21; 1981, c. 590; c. 916, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 34; 1987, c. 869, s. 5(1)—5(3).)

Section Set Out Twice. — The section above is effective six months after approval of a revised subclassification plan by the Commissioner of Insurance. See the Editor's Note below. For this section as in effect until that time, see the preceding section, also numbered § 58-248.34.

Editor's Note. — Session Laws 1987, c. 869, s. 20 makes the amendments by s. 5(2) and 5(3) of the act effective six months after the date the revised subclassification plan is approved by the Commissioner of Insurance as provided in s. 17 of the act.

Session Laws 1987, c. 869, s. 17 provides: "The North Carolina Rate Bureau shall file in accordance with G.S. 58-124.31 a revised subclassification plan to reflect the provisions of this act. The Bureau shall make the filing no later than February 1, 1988, and such plan shall become effective six months after the date the plan is approved by the Commissioner. Such revised plan shall apply only to new and renewal nonfleet private passenger motor vehicle insurance policies written on and after the effective date of the plan. With respect to any moving traffic violations that occur before the effective date of the plan, the surcharge levied under G.S. 58-248.34(f) shall be determined by the revised subclassification plan. With respect to at fault accidents that occur before the effective date of the plan, the premium surcharges under the plan shall be determined by the subclassification plan in effect at the time such at fault accidents occur."

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 1987, c. 869, s. 5(1), effective August 14, 1987, substituted "a" for "an identifiable" in the first sentence in subsection (f).

§ 58-248.34 is set out twice. See notes for effective dates.

Session Laws 1987, c. 869, s. 5(2) and 5(3), in the third sentence in subsection (f), substituted "58-124.31" for "58-30.4" and inserted "subject to the provisions of G.S. 58-124.33" following "said plan." For the effective date of this amendment, see the Editor's Note above.

§ 58-248.38. Physical damage insurance availability.

No physical damage insurer shall refuse to make physical damage coverage available to any applicant for the reason that such applicant has, or may acquire, auto liability insurance through the Facility plan as provided herein; further that no such insurer may levy a surcharge or increased rate for such physical damage coverage on the basis that such applicant has, or may acquire, auto liability insurance through the Facility plan as provided herein.

Any insurer or representative thereof who fails to comply with or violates this section shall be subject to suspension or revocation of his certificate or license and shall be subject to the provisions of G.S. 58-9.7. (1973, c. 818, s. 1; 1985, c. 666, s. 37.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, substituted "who fails to comply with or violates this section shall be subject to suspension or revocation of his certificate or license and shall be subject to the provisions of G.S. 58-9.7" for "failing to comply with, or otherwise violating the provisions of this section, shall be punished as prescribed in G.S. 58-248.4 and 58-248.5."

§ 58-248.39. Hearings; review.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-248.40. Termination of North Carolina Automobile Insurance Plan.

CASE NOTES

Cited in Coleman v. Interstate Cas. Ins. Co., — N.C. App. —, 352 S.E.2d 249 (1987).

§ 58-248.41. Modification of nonfleet private passenger motor vehicle insurance recoupment.

(a) During the period beginning on July 1, 1988, through June 30, 1989, eighty percent (80%) of the Facility's losses shall be recouped according to G.S. 58-248.34(f) and twenty percent (20%) shall be allocated among all policies.

(b) During the period beginning on July 1, 1989, through June 30, 1990, sixty percent (60%) of the Facility's losses shall be re-

couped according to G.S. 58-248.34(f) and forty percent (40%) shall be allocated among all policies.

(c) During the period beginning on July 1, 1990, through June 30, 1991, forty percent (40%) of the Facility's losses shall be recouped according to G.S. 58-248.34(f) and sixty percent (60%) shall be allocated among all policies.

(d) During the period beginning on July 1, 1991, through June 30, 1992, twenty percent (20%) of the Facility's losses shall be recouped according to G.S. 58-248.34(f) and eighty percent (80%) shall be allocated among all policies.

(e) Beginning on July 1, 1992, the Facility's losses shall be allocated among all policies.

(f) Recoupment and allocation of Facility losses under this section shall be made during the periods specified for the purpose of equitably distributing assessments made on member companies as a result of Facility losses. The recoupment and allocation of such losses shall not be considered as the collection or imposition of rates or premiums for any purposes.

(g) This section applies only to losses from, recoupment on, and allocation among nonfleet private passenger motor vehicle insurance policies. This section does not in any way affect the procedures for recouping losses from other motor vehicle insurance policies reinsured by the Facility. (1987, c. 869, s. 2.)

Editor's Note. — Session Laws 1987, c. 869, s. 20 makes this section effective upon ratification. The act was ratified August 14, 1987.

Session Laws 1987, c. 869, s. 19 is a severability clause.

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

Article 26.

Nature of Policies.

§ 58-251.1. Accident and health policy provisions.

(b) Other Provisions. — Except as provided in subsection (c) of this section, no such policy delivered or issued for delivery to any person in this State shall contain provisions respecting the matters set forth below unless such provisions are in the substance of the words that appear in this section. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

(1) A provision in the substance of the following language:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in

this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision in the substance of the following language:

MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision in the substance of the following language:

OTHER INSURANCE IN THIS INSURER: If an accident or health or accident and health policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for .... (insert type of coverage or coverages) in excess of $..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision in the substance of the following language:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return

of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "... EXPENSE INCURRED BENEFITS." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provisions no third-party liability coverage shall be included as "other valid coverage.")

(5) A provision in the substance of the following language:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indmenities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "... OTHER BENEFITS." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by in-

surance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage.")

(6) A provision in the substance of the following language:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars ($200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

a. Until at least age 50 or,

b. In the case of a policy issued after age 44, for at least five years from its date of issue.

The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Commissioner or any combination of such coverages. In the absence of such definition such term shall

not include any coverage provided for such insured pursuant to any compusulory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision in the substance of the following language: UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(8) Repealed by Session Laws 1955, ch. 886, s. 1.

(9) A provision in the substance of the following language: CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(10) A provision in the substance of the following language: ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision in the substance of the following language: INTOXICANTS AND NARCOTICS: Except for the payment of benefits for the necessary care and treatment of chemical dependency as provided by law, the insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(1953, c. 1095, s. 2; 1955, c. 850, s. 8; c. 886, s. 1; 1961, c. 432; 1979, c. 755, ss. 9-12; 1983 (Reg. Sess., 1984), c. 1110, s. 13; 1987, c. 864, s. 42.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides:

"The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

References to "workmen's compensation" in this section are now deemed references to "workers' compensation." See § 97-1.1.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, inserted "Except for the payment of benefits for the necessary care and treatment of chemical dependency as required by law" in subdivision (b)(11).

The 1987 amendment, effective August 14, 1987, substituted "provided" for "required" in subdivision (11).

Legal Periodicals. —

For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

CASE NOTES

Accident did not occur "in the course of" the insured's employment, where he had left the work area and had gone off to another area, totally unused in his business, to sleep for 45 minutes and was injured by a falling ceiling fan. The fact that he also owned the sleeping area appears merely fortuitous and does not affect the result. Therefore, he was not excluded from coverage by a policy provision excluding treatment of bodily injuries arising from or in the course of any employment. Dayal v. Provident Life & Accident Ins. Co., 71 N.C. App. 131, 321 S.E.2d 452 (1984).

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-251.2. Renewability of individual and blanket hospitalization and accident and health insurance policies.

(a) Every individual or blanket family hospitalization policy and accident and health policy, other than noncancellable or nonrenewable policies but including group, blanket and franchise policies, as defined in this Chapter, covering less than 10 persons, issued in North Carolina after January 1, 1956, shall include in substance the following provision:

Renewability: This policy is renewable at the option of the policyholder unless sufficient notice of nonrenewal is given the policyholder in writing by the insurer.

Sufficient notice shall be, during the first year of any policy, or during the first year following any lapse and reinstatement, a period of 30 days prior to the premium due date. After one continuous year of coverage and acceptance of premium for any portion of the second or subsequent year sufficient notice shall be a number of full months most nearly equivalent to one fourth the number of months of continuous coverage from the first anniversary of the date of issue or reinstatement, to the date of mailing of such notice: Provided no period of required notice shall exceed two years.

An insurer upon a showing of inadequacy of rates chargeable on accident and health policies, and a finding as to the same by the Commissioner, may increase such rates with the approval of the Commissioner. Thereafter, such rates shall be applicable to all policies of the same type; provided that no rate increase may become effective for any policy unless the insurer has given the policyholder written notice of the rate increase 45 days prior to the effective date of the increase. The policyholder thereafter must pay the increased rate in order to continue the policy in force.

(d) The requirements of this section do not apply to a refusal or renewal because of a change of occupation of an insured to one classified by the insurer as uninsurable nor to an increase in rate due to a change of occupation of an insured to a more hazardous occupation. (1955, c. 886, s. 2; 1957, c. 1085, s. 2; 1979, c. 755, s. 13; 1985, c. 666, s. 71.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, substituted "An insurer" for "The insurer," "rates chargeable" for "the rates chargeable," and "accident and health policies" for "such policies upon which notice of nonrenewal has been given" and deleted "of Insurance" following "the same by the Commis-

sioner", all in the first sentence of the last paragraph of subsection (a) and substituted the proviso at the end of the second sentence of the last paragraph of subsection (a) for "the holders of which receive notice of nonrenewal," and added subsection (d).

CASE NOTES

Constitutionality. — See American Nat'l Ins. Co. v. Ingram, 63 N.C. App. 38, 303 S.E.2d 649, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983).

Purpose of Section. — This act was designed to curb the abuse, at that time, of companies collecting premiums, then mass canceling of policies. In order to prevent companies from being locked in on inadequate rates, however, the General Assembly provided a method whereby the company, after giving the proper notice of nonrenewal, could seek a rate increase. American Nat'l Ins. Co. v. Ingram, 63 N.C. App. 38, 303 S.E.2d 649, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983).

§ 58-251.5. Insurers and others to afford coverage to mentally retarded and physically handicapped children.

CASE NOTES

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-251.6. Insurers and others to afford coverage for active medical treatment in tax-supported institutions.

CASE NOTES

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-251.8. Coverage for chemical dependency treatment.

(a) As used in this section, the term "chemical dependency" means the pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.

(b) Every insurer that writes a policy or contract of group or blanket health insurance or group or blanket accident and health insurance that is issued, renewed, or amended on or after January 1, 1985, shall offer to its insureds benefits for the necessary care and treatment of chemical dependency that are not less favorable than benefits for physical illness generally. Except as provided in subsection (c) of this section, benefits for treatment of chemical dependency shall be subject to the same durational limits, dollar limits, deductibles, and coinsurance factors as are benefits for physical illness generally.

(c) Every group policy or group contract of insurance that provides benefits for chemical dependency treatment and that provides total annual benefits for all illnesses in excess of six thousand dollars ($6,000) is subject to the following conditions:

(1) The policy or contract shall provide, for each 24-month period, a minimum benefit of six thousand dollars ($6,000) for the necessary care and treatment of chemical dependency.

(2) No more than one half of the policy's or contract's maximum benefits for chemical dependency for a 24-month period shall be paid for the necessary care and treatment of chemical dependency in any 30 consecutive day period.

(3) The policy or contract shall provide a minimum benefit of twelve thousand dollars ($12,000) for the necessary care and treatment of chemical dependency for the life of the policy or contract.

(d) Provisions for benefits for necessary care and treatment of chemical dependency in group policies or group contracts of insurance shall provide benefit payments for the following providers of necessary care and treatment of chemical dependency:

(1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:
   a. Chemical dependency units in facilities licensed after October 1, 1984;
   b. Medical units;
   c. Psychiatric units; and

(2) The following facilities or programs licensed after July 1, 1984, under [or] Article 2 of General Statutes Chapter 122C:
   a. Chemical dependency units in psychiatric hospitals;
   b. Chemical dependency hospitals;
   c. Residential chemical dependency treatment facilities;
   d. Social setting detoxification facilities or programs;
   e. Medical detoxification or programs; and

(3) Duly licensed physicians and duly licensed practicing psychologists and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under [or] Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit any policy or contract of insurance from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency.

(e) Coverage for chemical dependency treatment as described in this section shall not be applicable to any group policy holder or group contract holder who rejects the coverage in writing. (1983 (Reg. Sess., 1984), c. 1110, s. 7; 1985, c. 589, s. 43(a), (b).)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 17, makes this section effective upon ratification. The act was ratified July 6, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 14, provides:

"Each insurer and health maintenance organization that offers benefits for chemical dependency treatment shall report to the North Carolina Department of Insurance its experience under Sections 7, 8, or 9 of this act on or before April 1, 1986. The Department shall compile such reports and present them

to the Mental Health Study Commission and to the Joint Legislative Commission on Governmental Operations on or before May 1, 1986. Such report shall contain the following information:

"(1) The number of policies written that include coverage for chemical dependency treatment.

"(2) The number of insureds and beneficiaries or enrollees covered for chemical dependency treatment and the number not covered.

"(3) The number of offerings of coverage made and the number rejected.

"(4) Recommendations regarding the offering of chemical dependency benefits."

Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides:

"The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

Session Laws 1985, c. 589, s. 64 provides that prosecutions for offenses occurring before the effective date of the act (Jan. 1, 1986) are not abated or affected by the act, and that the statutes that would be applicable but for the act remain applicable to those prosecutions.

Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

The word "or" has been bracketed preceding "Article 2 of General Statutes Chapter 122C" in subdivisions (d)(2) and (d)(3), since Session Laws 1985, c. 589, s. 43(b), effective Jan. 1, 1988, deleted "Article 1A of General Statutes Chapter 122" in those subdivisions following "under" but did not delete "or" following the deleted language.

Session Laws 1985, c. 589, s. 64 provides that prosecutions for offenses occurring before the effective date of the act (Jan. 1, 1986) are not abated or affected by the act, and that the statutes that would be applicable but for the act remain applicable to those prosecutions.

Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Session Laws 1985, c. 589, s. 65 is a severability clause.

Effect of Amendments. — The 1985 amendment by c. 589, s. 43 (a), effective Jan. 1, 1986, inserted "or Article 2 of General Statutes Chapter 122C" in subdivisions (d)(2) and (d)(3).

The 1985 amendment by c. 589, s. 43(b), effective Jan. 1, 1988, deleted "Article 1A of General Statutes Chapter 122" following "licensed after July 1, 1984, under" in subdivisions (d)(2) and (d)(3).

§ 58-254.1. Industrial sick benefit insurance defined.

CASE NOTES

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-254.2. Industrial sick benefit insurance; provisions.

Legal Periodicals. — For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

CASE NOTES

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-254.4. Group accident and health insurance defined.

(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following paragraph:

Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall be structured on an actuarially sound basis.

(1945, c. 385; 1947, c. 721; 1951, c. 282; 1953, c. 1095, ss. 6, 7; 1987, c. 752, s. 19.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, rewrote the last sentence of the second paragraph of subsection (b).

CASE NOTES

Applied in Stainback v. Investor's Consol. Ins. Co., 64 N.C. App. 197, 306 S.E.2d 532 (1983).

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

Article 26C.

Group Health Insurance Continuation and Conversion Privileges.

Part 1. Continuation.

§ 58-254.35. Definitions.

Editor's Note. —

Session Laws 1981, c. 706, s. 2, as amended by Session Laws 1983, c. 142, s. 1, provides, in part: "This act shall apply only to group policies delivered, issued for delivery, renewed, or amended on or after the effective date of this act."

§ 58-254.42. Termination of continuation.

Continuation of insurance under the group policy for any person shall terminate on the earliest of the following dates:

(4) The date on which the group policy is terminated or, in the case of a multiple employer plan, the date his employer terminates participation under the group master policy. When this occurs the employee or member shall have the privilege described in G.S. 58-254.44 if the date of termination precedes that on which his actual continuation of insurance under that policy would have terminated. The insurer that insured the group prior to the date of termination shall make a converted policy available to the employee or member. (1981, c. 706, s. 1; 1983, c. 142, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 142, s. 4, provides "Sec. 4. This act shall apply to all group policies, as defined in G.S. 58-254.35(1), that are delivered, issued for delivery, renewed, or amended after the effective date of this act." The act became effective April 6, 1983.

Effect of Amendments. — The 1983 amendment, effective Apr. 6, 1983, added the last sentence of subdivision (4).

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Part 2. Conversion.

§ 58-254.45. Restrictions.

A converted policy shall not be available to an employee or member if termination of his insurance under the group policy occurred because:

(5) He failed to continue his insurance for the entire maximum period of three consecutive months following termination of active employment as provided for in Part 1 of this Article, unless that failure to continue was due to a change of insurer by the employer and said change of insurer was consummated during the three-month continuation period. In that event the employee or member shall be entitled to be issued a converted policy by the insurer that provided

the group policy to the employer prior to the change of insurer. (1981, c. 706, s. 1; 1983, c. 142, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 142, s. 4, provides "Sec. 4. This act shall apply to all group policies, as defined in G.S. 58-254.35(1), that are delivered, issued for delivery, renewed, or amended after the effective date of this act." The act became effective April 6, 1983.

Effect of Amendments. — The 1983 amendment, effective Apr. 6, 1983, in subdivision (5) inserted the language beginning "unless that failure" at the end of the first sentence and added the second sentence.

§ 58-254.47. Premium.

(c) All premium rates and adjustments to premium rates for converted policies shall be reasonable and must be filed with the Commissioner prior to use. A premium rate shall be deemed to be reasonable if it can be demonstrated by the insurer that the premium charged is expected to produce an incurred loss ratio to earned premiums of not less than sixty percent (60%) for all individual policies providing similar benefits offered and issued by the insurer. If an insurer experiences an incurred loss ratio of greater than eighty percent (80%) for all such policies, it shall be deemed reasonable for that insurer to increase premium rates to a level that will produce a prospective incurred loss ratio of no greater than eighty percent (80%), and the insurer shall file such new rates with the Commissioner not more often than once a year. (1981, c. 706, s. 1; 1983, c. 669.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "not more often than once a year" for "Provided, however, that such action may be taken by the insurer at intervals not more frequently than two years, the first of which shall be no earlier than January 1, 1984" at the end of subsection (c).

§ 58-254.57. Other conversion provisions.

(c) Subject to the conditions set forth in this subsection, the conversion privilege shall also be available (i) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and any eligible children whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependents' coverage following the employee's or member's death, at the end of such continuation, or (ii) to the spouse of the employee or member upon termination of coverage of the spouse because the spouse becomes ineligible because of divorce, separation, or otherwise, while the employee or member remains insured under the group policy, with respect to the spouse and such children whose coverage under the group policy terminates at the same time, or (iii) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be an eligible family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

(1981, c. 706, s. 1; 1983, c. 668, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 668, s. 2, provides: "This act shall apply to all group policies, as defined in G.S. 58-254.35(1), that are issued, renewed, or amended after the effective date of this act."

Section 3 of the act provides that the act is effective upon ratification. The act was ratified July 1, 1983.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, inserted "because of divorce, separation, or otherwise" in clause (ii) of subsection (c).

Article 27.

General Regulations.

§ 58-257. Application.

(a) On and after January 1, 1956, each individual or family accident, health, hospitalization policy, certificate or service plan of hospitalization and medical and/or dental service corporations shall be issued only on application in writing signed by the insured or the head of the household or guardian. Any application or enrollment form that is taken by a resident agent shall also contain the certificate of the agent that he has truly and accurately recorded on the application or enrollment form the information supplied by the insured. Every policy subject to the provisions of this section shall contain as a part of such policy the original or a reproduction of the application required by this section. This section shall not apply to travel or dread disease policies or to policies issued pursuant to a group insurance conversion privilege. If any such policy delivered or issued for delivery to any person in this State shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within 15 days after the receipt of such request at his home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(1913, c. 91, s. 8; C.S., s. 6485; 1953, c. 1095, s. 9; 1955, c. 850, s. 6; 1961, c. 1149; 1985, c. 484, s. 4.2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, rewrote the second sentence of subsection (a), which formerly read: "Each application shall also contain the certificate of the agent that he has truly and accurately recorded on the application the information supplied by the insured."

§ 58-258. Conforming to statute.

CASE NOTES

Applied in Stainback v. Investor's Consol. Ins. Co., 64 N.C. App. 197, 306 S.E.2d 532 (1983).

§ 58-260. Discrimination forbidden; right to choose services of optometrist, podiatrist, dentist or chiropractor.

Legal Periodicals. — For note, "ERISA Preemption of State Mandated-Provider Laws," see 6 Duke L. Rev. 1194 (1985).

§ 58-260.3. Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions.

(a) As used in this section and in G.S. 58-260.4, the term "group health insurance" means: (1) any policy described in G.S. 58-254.3, 58-254.4, or 58-254.6; (2) any group insurance certificate or group subscriber contract issued by a hospital service corporation pursuant to General Statutes Chapter 57; or (3) any health care plan provided or arranged by a health maintenance organization pursuant to General Statutes Chapter 57B. As used in this section and in G.S. 58-260.4, the term "insurance fiduciary" means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums.

(b) No insurance fiduciary shall:

(1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; and

(2) Willfully fail to deliver, at least 30 days prior to the termination of such insurance, to each named insured a written notice of the insurance fiduciary's intention to stop payment of premiums.

(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of a Class J felony if the group health or life insurance was, in whole or in part, paid for out of wages withheld or other funds collected from the persons insured.

(d) Any insurance fiduciary who violates subsection (b) of this section shall be subject only to the court order for restitution provided for in subsection (e) of this section if the group health or life insurance covered 15 or more persons and was fully paid for by the insurance fiduciary.

(e) Upon conviction under subsection (c) or a finding under subsection (d) of this section of a violation of subsection (b) of this section the court shall order the insurance fiduciary to make full

restitution to persons insured who incurred expenses that would have been covered by the group health insurance or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.

(f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-27 with respect only to transactions involving group health or life insurance.

(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify the persons insured of their rights to health insurance conversion policies under Article 26C of General Statutes Chapter 58. (1985, c. 507, s. 1.)

Editor's Note. — Session Laws 1985, c. 507, s. 2 makes this section effective Jan. 1, 1986.

§ 58-260.4. Group health or life insurers to notify insurance fiduciaries of obligations.

(a) On and after January 1, 1986, upon the issuance or renewal of any policy, contract, certificate, or evidence of coverage of group health or life insurance, the insurer, corporation, or health maintenance organization shall give written notice to the insurance fiduciary of the provisions of G.S. 58-260.3.

(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

"UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-260.3, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR HEALTH CARE PLAN PREMIUMS, FOR WHICH PAYMENT WAGES OR OTHER FUNDS ARE WITHHELD FROM THE PERSONS INSURED, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE PLAN, OR HEALTH CARE PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY SUCH PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 30 DAYS PRIOR TO THE TERMINATION OF SUCH COVERAGES, TO EACH NAMED INSURED A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO THE NAMED INSUREDS OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 26C OF GENERAL STATUTES CHAPTER 58. VIOLATION OF THIS LAW IS A FELONY IF THE INSURANCE IS, IN WHOLE OR IN PART, PAID FOR OUT OF WAGES WITHHELD OR OTHER FUNDS COLLECTED FROM THE PERSONS INSURED. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE." (1985, c. 507, s. 1.)

Editor's Note. — Session Laws 1985, c. 507, s. 2 makes this section effective Jan. 1, 1986.

§ 58-260.5. Preferred provider; definition.

The term "preferred provider" as used in this Chapter with respect to contracts, organizations, policies or otherwise means a person, who has contracted for, or a provider of health care services who has agreed to accept special reimbursement or other terms for health care services from any person; or an insurer subject to the provisions of this Chapter or other applicable law for health care services on a fee for service basis, or in exchange for providing health care services to beneficiaries of a plan administered pursuant to this Chapter. Except where specifically prohibited either by G.S. 58-260.6 or by regulations promulgated by the Department of Insurance, not inconsistent with this Chapter, the contractual terms and conditions for special reimbursements shall be those which the insurer, health care provider and the preferred provider find to be mutually agreeable. (1985, c. 735, s. 4.)

Editor's Note. — Session Laws 1985, c. 735, s. 1 provides:

"The purpose of this act is to authorize corporations organized pursuant to Chapter 57 of the General Statutes, insurers and persons subject to the provisions of Chapter 58 of the General Statutes and persons arranging for the provisions of health care benefits on a fee for service basis to seek, experiment, and implement innovative means of reducing the costs of health care services to persons who are members of or covered by such plans, policies or certificates. Therefore, the General Assembly declares that innovation in the reimbursement mechanisms for health care services and the implementation of reducing such costs is a public good which advances the general welfare of the citizens of this State."

Session Laws 1985, c. 735, s. 6 makes this section effective Oct. 1, 1985.

Section 5 of Session Laws 1985, c. 735 is a severability clause.

§ 58-260.6. Preferred provider contracts.

(a) Notwithstanding any other provisions of law, except the second and third paragraphs of G.S. 58-260, corporations organized pursuant to this Chapter are authorized to enter into preferred provider contracts in addition to all other contracts authorized by this Chapter, or to enter other cost containment arrangements approved by the Commissioner of Insurance, with persons, entities or organizations for the purpose of reducing the cost of providing health care services. Such preferred provider contracts may be entered into with licensed institutions and practitioners of all types without regard to specialty of services or limitation to a specific type of practice.

(b) The Department of Insurance shall have authority to make rules applicable to persons offering preferred provider plans, policies, or contracts pursuant to this section. These rules shall be designed to provide for (i) accessibility of preferred provider services to individuals comprising the insured or contracted group, (ii) the adequacy of the number and locations of institutions and practitioners, (iii) the availability of services at reasonable times, and (iv) financial solvency.

(c) The Department of Insurance shall require each preferred provider plan to provide summary data regarding the financial re-

imbursement offered to providers of health care. All such plans shall disclose annually the following information:

(1) the name by which the preferred provider plan policy or arrangement is known, and its business address;

(2) the name, address and nature of any separate organization which administers the plan, policy or arrangement on behalf of the preferred provider; and

(3) the names and addresses of all providers of health care designated by the preferred provider and the terms of the agreements entered into with those providers.

(d) A person enrolled in a preferred provider plan may obtain covered health care services from a provider not participating in the plan. The preferred provider plan may, however, limit the coverage for health care services obtained from a provider not participating in the plan, except that payments for services rendered by such non-participating providers may not be reduced by more than twenty percent (20%) of payments that would be made to participating providers under coverage for the same services. This percentage limitation shall not require any waiver of copayments or waiver of deductibles in determining payments for services rendered by non-participating providers. Preferred provider policies or contracts offered pursuant to this section shall provide for payment for services rendered by non-participating providers. Except as provided in this subsection, such payment may differ from that provided to participating providers in the discretion of the corporation. Non-participating providers may participate in other arrangements with the preferred provider, but will be subject to the provider's approved reimbursement mechanisms including, but not limited to, direct payment of health insurance benefits to the subscriber without right of assignment to the provider of health care services.

(e) Upon the initial offering of a preferred provider plan to the public, any potential provider institutions and practitioners shall be allowed the opportunity to submit a proposal for participation in accordance with the terms of the plan. The health care providers shall have at least thirty (30) days to submit a proposal for participation. Subsequent to the initial offering of a preferred provider plan, any provider seeking to submit a proposal may be permitted to do so, and the plan shall consider all pending applications for participation and give reasons for any rejections on at least an annual basis. Any provider seeking to participate in the plan, whether upon the initial offering or subsequently, may be permitted to do so in the discretion of the preferred provider plan. The second and third paragraphs of G.S. 58-260 are specifically made applicable to preferred provider plans.

(f) Any provision of a contract between a preferred provider plan and a health care provider restricting the health care provider's right to enter into preferred provider arrangements with other parties is prohibited. Any such restriction in a preferred provider contract between a preferred provider plan and a provider of health care services is null and void and shall not be enforceable. The existence of any such unenforceable restriction shall not invalidate any other provision of the preferred provider contract.

(g) A list of the current participating health care providers in the geographic area in which a substantial portion of health care services will be available shall be provided to enrollees and contracting parties.

(h) Publications or advertisements of preferred providers plans or arrangements shall not refer to the quality or efficiency of the services of non-participating providers. (1985, c. 735, s. 4; 1987, c. 681, ss. 2, 5, 6.)

Editor's Note. — Session Laws 1985, c. 735, s. 1 provides:

"The purpose of this act is to authorize corporations organized pursuant to Chapter 57 of the General Statutes, insurers and persons subject to the provisions of Chapter 58 of the General Statutes and persons arranging for the provisions of health care benefits on a fee for service basis to seek, experiment, and implement innovative means of reducing the costs of health care services to persons who are members of or covered by such plans, policies or certificates. Therefore, the General Assembly declares that innovation in the reimbursement mechanisms for health care services and the implementation of reducing such costs is a public good which advances the general welfare of the citizens of this State."

Session Laws 1985, c. 735, s. 6 makes this section effective Oct. 1, 1985.

Session Laws 1985, c. 735, s. 5 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 27, 1987, and applicable to all preferred provider contracts entered into or renewed after that date, added "except that payments for services rendered by such non-participating providers may not be reduced more than twenty percent (20%) of payments that would be made to participating providers under coverage for the same services" at the end of the second sentence of subsection (d), inserted the present third sentence of subsection (d), inserted "Except as provided in this subsection" at the beginning of the present fifth sentence of subsection (d), and added "and the plan shall consider all pending applications for participation and give reasons for any rejections on at least an annual basis" at the end of the third sentence of subsection (e).

§ 58-262. Punishment for violation.

Any company, association, society, or other insurer or any officer or agent thereof, which or who issues or delivers to any person in this State any policy in willful violation of this Subchapter, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars ($5,000) for each offense; and the Commissioner of Insurance may revoke the license of any company, corporation, association, society, or other insurer of another state or country, or of the agent thereof, which or who willfully violates any provision of this Subchapter. (1911, c. 209, s. 6; 1913, c. 91, s. 13; C.S., s. 6490; 1985, c. 666, s. 28.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "in willful violation of this Subchapter, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars ($5,000) for each offense" for "in willful violation of the provisions of this Subchapter, shall be punished by a fine of not more than five hundred dollars ($500.00) for each offense."

Article 27A.

Health Insurance Advisory Board.

§§ 58-262.1 to 58-262.12: Repealed by Session Laws 1985, c. 666, s. 12, effective July 10, 1985.

Article 27B.

Medicare Supplement Insurance Minimum Standards.

§ 58-262.14. Standards for definitions in policies.

CASE NOTES

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-262.16. Minimum benefit standards.

CASE NOTES

Cited in Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 58-262.20: Repealed by Session Laws 1987, c. 827, s. 222, effective August 13, 1987.

§§ 58-262.21 to 58-262.29: Reserved for future codification purposes.

Article 27C.

Determination of Jurisdiction Over Providers of Health Care Benefits.

§ 58-262.30. Purposes.

The purposes of this Article are: To give the State jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examinations by the State if the provider of health care benefits is unable to show it is subject to another jurisdiction; to make such a provider of health care benefits subject to the laws of the State if it cannot show that it is subject to another jurisdiction; and to disclose the purchasers of such health care benefits whether or not the plans are fully insured. (1985, c. 304, s. 1.)

Editor's Note. — Session Laws 1985, c. 304, s. 2 makes this Article effective Aug. 1, 1985.

§ 58-262.31. Authority and jurisdiction of Commissioner.

Notwithstanding any other provision of law, and except as provided in this Article, any person that provides coverage in this State for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, prefessional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the Commissioner, unless the person shows that while providing such services it is subject to the jurisdiction of another agency or subdivision of this State or of the federal government. (1985, c. 304, s. 1.)

§ 58-262.32. How to show jurisdiction.

A person may show that it is subject to the jurisdiction of another agency or subdivision of this State or the federal government, by providing to the Commissioner the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services. (1985, c. 304, s. 1.)

§ 58-262.33. Examination.

Any person that is unable to show under G.S. 58-262.32 that it is subject to the jurisdiction of another agency or subdivision of this State or of the federal government, shall submit to an examination by the Commissioner to determine the organization and solvency of the person, and to determine whether or not such person complies with the applicable provisions of this Chapter or General Statutes Chapters 57 or 57B. (1985, c. 304, s. 1.)

§ 58-262.34. Subject to State laws.

Any person unable to show that it is subject to the jurisdiction of another agency or subdivision of this State or the federal government, shall be subject to all appropriate provisions of this Chapter or General Statutes Chapters 57 or 57B regarding the conduct of its business. (1985, c. 304, s. 1.)

§ 58-262.35. Disclosure.

(a) Any production agency or administrator that advertises, sells, transacts, or administers the coverage in this State described in G.S. 58-262.31 and that is required to submit to an examination by the Commissioner under G.S. 58-262.33, shall, if said coverage is not fully insured or otherwise fully covered by an admitted life, accident, health, accident and health, or disability insurer, nonprofit hospital, medical, or dental service plan, or nonprofit health care plan, clearly and distinctly advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(b) Any administrator that advertises or administers the coverage in this State described in G.S. 58-262.31 and that is required to submit to an examination by the Commissioner under G.S. 58-262.33, shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect. (1985, c. 304, s. 1.)

SUBCHAPTER VII. FRATERNAL ORDERS AND SOCIETIES.

ARTICLE 28.

Fraternal Orders.

§§ 58-263 to 58-307: Repealed by Session Laws 1987, c. 483, s. 1, effective January 1, 1988.

Cross References. — As to fraternal benefit societies and fraternal orders, see now Article 31A of Chapter 58, § 58-340.1 et seq., and Article 31B of Chapter 58, § 58-340.51 et seq.

Editor's Note. — Session Laws 1987, c. 483, s. 1 repeals Subchapter VII of Chapter 58, consisting of Articles 28, 29 and 30, effective January 1, 1988.

ARTICLE 29.

Whole Family Protection.

§§ 58-308 to 58-313: Repealed by Session Laws 1987, c. 483, s. 1, effective January 1, 1988.

Cross References. — As to fraternal benefit societies and fraternal orders, see now Article 31A of Chapter 58, § 58-340.1 et seq., and Article 31B of Chapter 58, § 58-340.51 et seq.

ARTICLE 30.

General Provisions for Societies.

§§ 58-314, 58-315: Repealed by Session Laws 1987, c. 483, s. 1, effective January 1, 1988.

Cross References. — As to fraternal benefit societies and fraternal orders, see now Article 31A of Chapter 58, § 58-340.1 et seq., and Article 31B of Chapter 58, § 58-340.51 et seq.

SUBCHAPTER VIIA. FRATERNAL BENEFIT SOCIETIES AND FRATERNAL ORDERS

ARTICLE 31A.

Fraternal Benefit Societies.

§ 58-340.1. Fraternal benefit societies.

Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of G.S. 58-340.38(a)(2) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this Article, is hereby declared to be a fraternal benefit society. (1987, c. 483, s. 2.)

Editor's Note. — Session Laws 1987, c. 483, s. 3 makes this Article effective January 1, 1988.

§ 58-340.2. Lodge system.

(a) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated or admitted in accordance with its laws, rules and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings periodically in furtherance of the purposes of the society.

(b) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice or vote in the management of the society. (1987, c. 483, s. 2.)

§ 58-340.3. Representative form of government.

A society has a representative form of government when:

(a) It has a supreme governing body constituted in one of the following ways:

(1) Assembly. — The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the busi-

ness of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(2) Direct Election. — The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(b) The officers of the society are elected either by the supreme governing body or by the board of directors;

(c) Only benefit members are eligible for election to the supreme governing body, the board of directors or any intermediate assembly; and

(d) Each voting member shall have one vote; no vote may be cast by proxy. (1987, c. 483, s. 2.)

§ 58-340.4. Terms used.

Whenever used in this Article:

(a) "Benefit contract" shall mean the agreement for provision of benefits authorized by G.S. 58-340.16, as that agreement is described in G.S. 58-340.19(a).

(b) "Benefit member" shall mean an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(c) "Certificate" shall mean the document issued as written evidence of the benefit contract.

(d) "Premiums" shall mean premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

(e) "Laws" shall mean the society's articles of incorporation, constitution and bylaws, however designated.

(f) "Rules" shall mean all rules, regulations or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(g) "Society" shall mean fraternal benefit society, unless otherwise indicated.

(h) "Lodge" shall mean subordinate member units of the society, known as camps, courts, councils, branches or by any other designation. (1987, c. 483, s. 2.)

§ 58-340.5. Purposes and powers.

(a) A society shall operate for the benefit of members and their beneficiaries by:

(1) Providing benefits as specified in G.S. 58-340.16; and

(2) Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious purposes for the benefit of its members, which may also be extended to others.

Such purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(b) Every society shall have the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It shall have the power to change, alter, add to or amend such laws and rules and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. (1987, c. 483, s. 2.)

§ 58-340.6. Qualifications for membership.

(a) A society shall specify in its laws or rules:

(1) Eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age 15 and not greater than age 21;

(2) The process for admission to membership for each membership class; and

(3) The rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(b) A society may also admit social members who shall have no voice or vote in the management of the insurance affairs of the society.

(c) Membership rights in the society are personal to the member and are not assignable. (1987, c. 483, s. 2.)

§ 58-340.7. Location of office, meetings, communications to members, grievance procedures.

(a) The principal office of any domestic society shall be located in this State. The meetings of its supreme governing body may be held in any state, district, province or territory wherein such society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(b) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Such required reports, notices and statements shall be printed conspicuously in the publication. If the records of a society show that two or

more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(c) Not later than June 1 of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, such synopsis may be published in the society's official publication.

(d) A society may provide in its laws or rules for grievance or complaint procedures for members. (1987, c. 483, s. 2.)

§ 58-340.8. No personal liability.

(a) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(b) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, suit or proceeding, whether civil, criminal, administrative or investigative, or threat thereof, in which the person may be involved by reason of the fact that he or she is or was a director, officer, employee or agent of the society or of any firm, corporation or organization which he or she served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (1) in relation to any matter in such action, suit or proceeding as to which he or she shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee or agent of the society or (2) in relation to any matter in such action, suit or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his or her conduct was unlawful. The determination whether the conduct of such person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in subpoints (1) or (2) of the preceding sentence may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to such action, suit or proceeding or by a court of competent jurisdiction. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to such person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of his or her heirs, executors and administrators.

(c) A society shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the society, or who is or was serving at the request of the society as a director, officer, employee or agent of any other firm, corporation, or organization against any liability asserted against such person and incurred by him or her in any such

capacity or arising out of his or her status as such, whether or not the society would have the power to indemnify the person against such liability under this section.

(d) A person serving as an officer or a member of a supreme governing body of a society shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act, except where the person:

(1) Is compensated for his services beyond reimbursement for expenses,
(2) Was not acting within the scope of his official duties,
(3) Was not acting in good faith,
(4) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury,
(5) Derived an improper personal financial benefit from the transaction,
(6) Incurred the liability from the operation of a motor vehicle, or
(7) Is sued in an action that would qualify as a derivative action if the organization were a for-profit corporation or as a member's or director's derivative action under G.S. 55A-28.1 or G.S. 55A-28.2 if the organization were a nonprofit corporation.

The immunity in this subsection is personal to the individual officers and members of the supreme governing body and does not immunize the organization for the acts or omissions of those officers or members. (1987, c. 483, s. 2; c. 799, s. 2.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable only to causes of action arising on or after that date, added subsection (d).

§ 58-340.9. Waiver.

The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member. (1987, c. 483, s. 2.)

§ 58-340.10. Organization.

A domestic society organized on or after January 1, 1988 shall be formed as follows:

(a) Ten or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgement of deeds, articles of incorporation, in which shall be stated:
(1) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;
(2) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this Article;

(3) The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

(b) Such articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the Commissioner of Insurance, who may require such further information as the Commissioner deems necessary. The bond with sureties approved by the Commissioner of Insurance shall be in such amount, not less than three hundred thousand dollars ($300,000) nor more than one million five hundred thousand dollars ($1,500,000), as required by the Commissioner of Insurance. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the Commissioner of Insurance shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(c) No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the Commissioner of Insurance upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

(d) Upon receipt of a preliminary certificate of authority from the Commissioner of Insurance, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

(1) Actual bona fide applications for benefits have been secured on not less than 500 applicants, and any nec-

essary evidence of insurability has been furnished to and approved by the society;

(2) At least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(3) There has been submitted to the Commissioner of Insurance, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

(4) It shall have been shown to the Commissioner of Insurance, by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least one hundred and fifty thousand dollars ($150,000). Said advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, such premiums shall be returned to said applicants.

(e) The Commissioner of Insurance may make such examination and require such further information as the Commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this article. The certificate of authority shall be prima facie evidence of the existence of the society at the date of such certificate. The Commissioner of Insurance shall cause a record of such certificate of authority to be made. A certified copy of such record may be given in evidence with like effect as the original certificate of authority.

(f) Any incorporated society authorized to transact business in this State at the time this article becomes effective shall not be required to reincorporate. (1987, c. 483, s. 2.)

§ 58-340.11. Amendments to laws.

(a) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting thereof or, if its laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission thereof, a majority of the members voting shall have signified their consent to such amendment by one of the methods herein specified.

(b) No amendment to the laws of any domestic society shall take effect unless approved by the Commissioner of Insurance who shall

approve such amendment if the Commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects and purposes of the society. Unless the Commissioner of Insurance shall disapprove any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the Commissioner of Insurance shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the Commissioner disapproves such amendment, the reasons therefor shall be stated in such written notice.

(c) Within 90 days from the approval thereof by the Commissioner of Insurance, all such amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

(d) Every foreign or alien society authorized to do business in this State shall file with the Commissioner of Insurance a duly certified copy of all amendments of, or additions to, its laws within 90 days after the enactment of same.

(e) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof. (1987, c. 483, s. 2.)

§ 58-340.12. Institutions.

A society may create, maintain and operate, or may establish organizations to operate, not for profit institutions to further the purposes permitted by G.S. 58-340.5(a)(2). Such institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement. (1987, c. 483, s. 2.)

§ 58-340.13. Reinsurance.

(a) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this State, or if not so authorized, one which is approved by the Commissioner of Insurance, but no such society may reinsure substantially all of its insurance in force without the written permission of the Commissioner of Insurance. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1988, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(b) Notwithstanding the limitation in subsection (a), a society may reinsure the risks of another society in a consolidation or merger approved by the Commissioner of Insurance under G.S. 58-340.14. (1987, c. 483, s. 2.)

§ 58-340.14. Consolidations and mergers.

(a) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the Commissioner of Insurance:

(1) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(2) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the Commissioner of Insurance but not earlier than December 31, next preceding the date of the contract;

(3) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail; and

(4) Evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(b) If the Commissioner of Insurance finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, the Commissioner shall approve the contract and issue a certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the Commissioner of Insurance of this State or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the Commissioner of Insurance of such state or territory and a certificate of such approval filed with the Commissioner of Insurance of this State. In case such contract is not approved it shall be inoperative, and the fact of the submission and its contents shall not be disclosed by the Commissioner of Insurance.

(c) Upon the consolidation or merger becoming effective as herein provided, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this State in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

(d) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice

or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

(e) All necessary and actual expenses and compensation incident to the proceedings provided in this section shall be paid as provided by such contract of consolidation or merger: Provided, however, that no brokerage or commission shall be included in such expenses and compensation or shall be paid to any person by either of the parties to any such contract in connection with the negotiation therefor or execution thereof, nor shall any compensation be paid to any officer or employee of either of the parties to such contract for directly or indirectly aiding in effecting such contract of consolidation or merger. An itemized statement of all such expenses shall be filed with the Commissioner of Insurance, subject to approval, and when approved the same shall be binding on the parties thereto. Except as fully expressed in the contract of consolidation or merger, or itemized statement of expenses, as approved by the Commissioner of Insurance, or commissioners, as the case may be, no compensation shall be paid to any person or persons, and no officer or employee of the State shall receive any compensation, directly or indirectly, for in any manner aiding, promoting, or assisting any such consolidation or merger. (1987, c. 483, s. 2.)

§ 58-340.15. Conversion of fraternal benefit society into mutual life insurance company.

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the general insurance laws for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan. No such conversion shall take effect unless and until approved by the Commissioner of Insurance who may give such approval if the Commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificateholders of the society. (1987, c. 483, s. 2.)

§ 58-340.16. Benefits.

(a) A society may provide the following contractual benefits in any form:

(1) Death benefits;
(2) Endowment benefits;
(3) Annuity benefits;
(4) Temporary or permanent disability benefits;
(5) Hospital, medical or nursing benefits;
(6) Monument or tombstone benefits to the memory of deceased members; and
(7) Such other benefits as authorized for life insurers and which are not inconsistent with this Article.

(b) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (a),

consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person. (1987, c. 483, s. 2.)

§ 58-340.17. Beneficiaries.

(a) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(b) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member.

(c) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of such benefit, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased insured, provided that if the owner of the certificate is other than the insured, such proceeds shall be payable to such owner. (1987, c. 483, s. 2.)

§ 58-340.18. Benefits not attachable.

No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society. (1987, c. 483, s. 2.)

§ 58-340.19. The benefit contract.

(a) Every society authorized to do business in this State shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(b) Any changes, additions or amendments to the laws of the society duly made or enacted subsequent to the issuance of the

certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(c) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(d) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board, and that if the payment is not made either (1) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (2) in lieu of or in combination with (1), the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(e) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(f) No certificate shall be delivered or issued for delivery in this State unless a copy of the form has been filed with and approved by the Commissioner of Insurance in the manner provided for like policies issued by life insurers in this State. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from the effective date of this Article shall meet the standard contract provision requirements not inconsistent with this Article for like policies issued by life insurers in this State, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(g) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of such

certificates and all rights, obligations and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(h) A society may specify the terms and conditions on which benefit contracts may be assigned. (1983, c. 483, s. 2.)

§ 58-340.20. Nonforfeiture benefits, cash surrender values, certificate loans and other options.

(a) For certificates issued prior to one year after January 1, 1988, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall comply with the provisions of law applicable immediately prior to January 1, 1988.

(b) For certificates issued on or after one year from January 1, 1988 for which reserves are computed on the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Table or the Commissioner's 1958 Standard Ordinary Mortality Table, or the Commissioner's 1980 Standard Mortality Table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this State applicable to life insurers issuing policies containing like benefits based upon such tables. (1987, c. 483, s. 2.)

§ 58-340.21. Investments.

A society shall invest its funds only in such investments as are authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State must comply in substance with the investment requirements and limitations imposed by G.S. 58-79 and applicable to life insurers; provided, that any such society that invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall thereby be deemed to be in compliance with G.S. 58-79 for a period of two years from January 1, 1988. (1987, c. 483, s. 2.)

§ 58-340.22. Funds.

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(c) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing such accounts and issuing such

contracts. To the extent the society deems it necessary in order to comply with any applicable federal or State laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which G.S. 58-340.19(b) and G.S. 58-340.19(d) shall not apply. (1987, c. 483, s. 2.)

§ 58-340.23. Exemptions.

Except as herein provided, societies shall be governed by this Article and shall be exempt from all other provisions of the general insurance laws of this State unless they be expressly designated therein, or unless it is specifically made applicable by this Article. (1987, c. 483, s. 2.)

§ 58-340.24. Taxation.

Every society organized or licensed under this Article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every State, county, district, municipal and school tax other than taxes on real estate not occupied by such society in carrying on its business. (1987, c. 483, s. 2.)

§ 58-340.25. Valuation.

(a) Standards of valuation for certificates issued prior to one year after the effective date of this Article shall be those provided by the laws applicable immediately prior to January 1, 1988.

(b) The minimum standards of valuation for certificates issued on or after one year from January 1, 1988 shall be based on the following tables:

(1) For certificates of life insurance — the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Mortality Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Ordinary Mortality Table or any more recent table made applicable to life insurers;

(2) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for non-cancellable accident and health benefits — such tables as are authorized for use by life insurers in this State.

All of the above shall be under valuation methods and standards (including interest assumptions) in accordance with the laws of this State applicable to life insurers issuing policies containing like benefits.

(c) The Commissioner of Insurance may, in his or her discretion, accept other standards for valuation if the Commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation

standard herein prescribed. The Commissioner of Insurance may, in his or her discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this State.

(d) Any society, with the consent of the Commissioner of Insurance of the state of domicile of the society and under such conditions, if any, which the Commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby. (1987, c. 483, s. 2.)

§ 58-340.26. Reports.

Reports shall be filed in accordance with the provisions of this section.

(a) Every society transacting business in this State shall annually, on or before the first day of March, unless for cause shown such time has been extended by the Commissioner of Insurance, file with the Commissioner of Insurance a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay the fee specified in G.S. 58-63 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the Commissioner of Insurance.

(b) As part of the annual statement herein required, each society shall, on or before the first day of March, file with the Commissioner of Insurance a valuation of its certificates in force on December 31st last preceding, provided the Commissioner of Insurance may, in his or her discretion for cause shown, extend the time for filing such valuation for not more than two calendar months. Such valuation shall be done in accordance with the standards specified in G.S. 58-340.25. Such valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the Department of Insurance of the state of domicile of the society.

(c) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars ($100.00) for each day during which such neglect continues, and, upon notice by the Commissioner of Insurance to that effect, its authority to do business in this State shall cease while such default continues. (1987, c. 483, s. 2.)

§ 58-340.27. Annual license.

Societies which are now authorized to transact business in this State may continue such business until the 30th day of June next succeeding January 1, 1988. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the 30th day of the succeeding June. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Commissioner of Insur-

ance the fee specified in G.S. 58-63. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this Chapter. (1987, c. 483, s. 2.)

§ 58-340.28. Examination of societies; no adverse publications.

(a) The Commissioner of Insurance, or any person he or she may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this State in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(b) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the Commissioner of Insurance. (1987, c. 483, s. 2.)

§ 58-340.29. Foreign or alien society — Admission.

No foreign or alien society shall transact business in this State without a license issued by the Commissioner of Insurance. Any such society desiring admission to this State shall comply substantially with the requirements and limitations of this Article applicable to domestic societies. Any such society may be licensed to transact business in this State upon filing with the Commissioner of Insurance:

(a) A duly certified copy of its Articles of Incorporation;
(b) A copy of its bylaws, certified by its secretary or corresponding officer;
(c) A power of attorney to the Commissioner of Insurance as prescribed in Section 35 [G.S. 58-340.35];
(d) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the Commissioner of Insurance, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the Commissioner of Insurance of this State;
(e) Certification from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;
(f) Copies of its certificate forms; and
(g) Such other information as the Commissioner of Insurance may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this Chapter. (1987, c. 483, s. 2.)

§ 58-340.30. Injunction — Liquidation — Receivership of domestic society.

(a) When the Commissioner of Insurance upon investigation finds that a domestic society:

(1) Has exceeded its powers;

(2) Has failed to comply with any provision of this Article;

(3) Is not fulfilling its contracts in good faith;

(4) Has a membership of less than 400 after an existence of one year or more; or

(5) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business;

the Commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30 day period in which to comply with the Commissioner's request for correction, and if the society fails to comply the Commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action under Article 41 of Chapter 1 of the General Statutes (quo warranto) should not be commenced against the society.

(b) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the Commissioner of Insurance may present the facts relating thereto to the Attorney General who shall, if he or she deems the circumstances warrant, commence an action to enjoin the society from transacting business or under Article 41 of Chapter 1 of the General Statutes (quo warranto).

(c) The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:

(1) The Commissioner of Insurance finds that the violation complained of has been corrected;

(2) The costs of such action shall have been paid by the society if the court finds that the society was in default as charged;

(3) The court has dissolved its injunction; and

(4) The Commissioner of Insurance has reinstated the certificate of authority.

(d) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(e) No action under this section shall be recognized in any court of this State unless brought by the Attorney General upon request of the Commissioner of Insurance. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the Commissioner of Insurance as such receiver.

(f) The provisions of this section relating to hearing by the Commissioner of Insurance, action by the Attorney General at the request of the Commissioner of Insurance, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business. (1987, c. 483, s. 2.)

§ 58-340.31. Suspension, revocation or refusal of license of foreign or alien society.

(a) When the Commissioner of Insurance upon investigation finds that a foreign or alien society transacting or applying to transact business in this State:

(1) Has exceeded its powers;
(2) Has failed to comply with any of the provisions of this Article;
(3) Is not fulfilling its contracts in good faith; or
(4) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

the Commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30 day period in which to comply with the Commissioner's request for correction, and if the society fails to comply the Commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, the Commissioner may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to the Commissioner that such suspension or refusal should be withdrawn or the Commissioner may revoke the authority of the society to do business in this State.

(b) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein. (1987, c. 483, s. 2.)

§ 58-340.32. Injunction.

No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of this State unless made by the Attorney General upon request of the Commissioner of Insurance. (1987, c. 483, s. 2.)

§ 58-340.33. Licensing of agents.

(a) Agents of societies shall be licensed in accordance with the provisions of the general insurance laws regulating the licensing, revocation, suspension or termination of license of resident and nonresident agents; provided that agents licensed pursuant to former G.S. 58-268 as of July 1, 1977, shall be exempt from examination.

(b) No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes substantially all of his or her services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained. (1987, c. 483, s. 2.)

§ 58-340.34. Unfair methods of competition and unfair and deceptive acts and practices.

Every society authorized to do business in this State shall be subject to the provisions of Article 3A of this Chapter relating to unfair methods of competition and unfair or deceptive acts or practices; provided, however, that nothing in such provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society. (1987, c. 483, s. 2.)

§ 58-340.35. Service of process.

(a) Every society authorized to do business in this State shall appoint in writing the Commissioner of Insurance and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such appointment, certified by said Commissioner of Insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

(b) Service shall only be made upon the Commissioner of Insurance, or if absent, upon the person in charge of the Commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the Commissioner of Insurance, the Commissioner shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society

except in the manner herein provided. At the time of serving any process upon the Commissioner of Insurance, the plaintiff or complainant in the action shall pay to the Commissioner of Insurance a fee of five dollars ($5.00). (1987, c. 483, s. 2.)

§ 58-340.36. Review.

All decisions and findings of the Commissioner of Insurance made under the provisions of this Article shall be subject to review under the Administrative Procedure Act. (1987, c. 483, s. 2.)

§ 58-340.37. Penalties.

(a) Any person, officer, member, or examining physician of any society authorized to do business under this Article who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisoned for not less than 30 days nor more than one year, or both, in the discretion of the court.

(b) Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided to do business as herein defined in this State, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000).

(c) Any society, or any officer, agent, or employee thereof, neglecting or refusing to comply with, or violating, any of the provisions of this Article, the penalty for which neglect, refusal, or violation is not specified in this section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five thousand dollars ($5,000).

(d) Any person violating the provisions of G.S. 58-340.14 shall be guilty of a felony, and upon conviction shall be liable to a fine of not more than fifteen thousand dollars ($15,000), or to imprisonment for not more than five years, or to both fine and imprisonment. (1987, c. 483, s. 2.)

§ 58-340.38. Exemption of certain societies.

(a) Nothing contained in this Article shall be so construed as to affect or apply to:

(1) Grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;

(2) Orders, societies or associations which admit to membership only persons engaged in one more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the

ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars ($400.00) or disability benefits of not more than three hundred fifty dollars ($350.00) to any person in any one year, or both; or

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars ($400.00) or for disability benefits of not more than three hundred fifty dollars ($350.00) to any one person in any one year, or both.

(b) Any such society or association described in subsections (a)(3) or (a)(4) supra which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subsection (a)(4) which has more than 1000 members, shall not be exempted from the provisions of this Article but shall comply with all requirements thereof.

(c) No society which, by the provisions of this section, is exempt from the requirements of this Article, except any society described in subsection (a)(2) supra, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(d) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this Article except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(e) The Commissioner of Insurance may require from any society or association, by examination or othewise, such information as will enable the Commissioner to determine whether such society or association is exempt from the provisions of this Article.

(f) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the general insurance laws of this State. (1987, c. 483, s. 2.)

§ 58-340.39. Severability.

If any provision of this Article or the application of such provision to any circumstance is held invalid, the remainder of the Article or the application of the provision to other circumstances, shall not be affected thereby. (1987, c. 483, s. 2.)

§§ 58-340.40 to 58-340.50: Reserved for future codification purposes.

Article 31B.

Fraternal Orders.

§ 58-340.51. General insurance law not applicable.

Nothing in the general insurance laws, except such as apply to fraternal orders shall be construed to extend to benevolent associations incorporated under the laws of this State that only levy an assessment on the members to create a fund to pay the family of a deceased member and make no profit therefrom, and do not solicit business through agents. (1987, c. 483, s. 2.)

Editor's Note. — Session Laws 1987, c. 483, s. 3 makes this Article effective January 1, 1988.

§ 58-340.52. Fraternal orders defined.

Every incorporated association, order, or society doing business in this State on the lodge system, with ritualistic form of work and representative form of government, for the purpose of making provision for the payment of benefits of three hundred dollars ($300.00) or less in case of death, sickness, temporary or permanent physical disability, either as the result of disease, accident, or old age, formed and organized for the sole benefit of its members and their beneficiaries, and not for profit, is hereby declared to be a "fraternal order". Societies and orders which do not make insurance contracts or collect dues or assessments therefor, but simply pay burial or other benefits out of the treasury of their orders, and use their funds for the purpose of building homes or asylums for the purpose of caring for and educating orphan children and aged and infirm people in this State, shall not be considered as "fraternal orders"; and such order or association paying death or disability benefits may also create, maintain, apply, or disburse among its membership a reserve or emergency fund as may be provided in its constitution or bylaws; but no profit or gain may be added to the payments made by a member. (1987, c. 483, s. 2.)

§ 58-340.53. Funds derived from assessments and dues.

The fund from which the payment of benefits, as provided for in G.S. 58-340.52, shall be made, and the fund from which the expenses of such association, order or society shall be defrayed, shall be derived from assessments or dues collected from its members. Such societies or associations shall be governed by the laws of the State governing fraternal orders or societies, and are exempt from the provisions of all general insurance laws of this State, and no law hereafter passed shall apply to such orders or societies unless fraternal orders or societies are designated therein. (1987, c. 483, s. 2.)

§ 58-340.54. Appointment of member as receiver or collector; appointee as agent for order or society; rights of members.

Assessments and dues referred to in G.S. 58-340.52 and G.S. 58-340.53 may be collected, receipted, and remitted by a member or officer of any local or subordinate lodge of any fraternal order or society when so appointed or designated by any grand, district, or subordinate lodge or officer, deputy, or representative of the same, there being no regular licensed agent or deputy of said grand lodge charged with said duties; but any person so collecting said dues or assessments shall be the agent or representative of such fraternal order or society, or any department thereof, and shall bind them by their acts in collecting and remitting said amounts so collected. Under no circumstances, regardless of any agreement, bylaws, contract, or notice, shall said officer or collector be the agent or representative of the individual member from whom any such collection is made; nor shall said member be responsible for the failure of such officer or collector to safely keep, handle, or remit said dues or assessments so collected, in accordance with the rules, regulations, or bylaws of said order or society; nor shall said member, regardless of any rules, regulations, or bylaws to the contrary, forfeit any rights under his certificate of membership in said fraternal order or society by reason of any default or misconduct of any said officer or member so acting. (1987, c. 483, s. 2.)

§ 58-340.55. Meetings of governing body; principal office.

Any such order or society incorporated and organized under the laws of this State may provide for the meeting of its supreme legislative or governing body in any other state, province, or territory wherein such order or society has subordinate lodges, and all business transacted at such meetings is as valid in all respects as if the meetings were held in this State; but the principal business office of such order or society shall always be kept in this State. (1987, c. 483, s. 2.)

§ 58-340.56. Conditions precedent to doing business.

Any such fraternal order, society, or association as defined by this Article, chartered and organized in this State or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the Commissioner of Insurance that its business is proper and legitimate and so conducted, may be admitted to transact business in this State upon the same conditions as are prescribed by this Chapter for admitting and authorizing foreign insurance companies to do business in this State, except that such fraternal orders shall not be required to have the capital required of such insurance companies. Organizers or agents shall be licensed without requiring an examination; provided, organizers or agents who are engaged in or intend to engage in the sale of

individual policies of life insurance shall take the examination required of life insurance agents. Those organizers or agents licensed for the sale of insurance pursuant to former G.S. 58-268 as of July 1, 1977, shall be exempt from examination. (1987, c. 483, s. 2.)

§ 58-340.57. Certain lodge systems exempt.

The following beneficial orders or societies shall be exempt from the requirements of this Article, and shall not be required to pay any license tax or fees nor make any report to the Commissioner of Insurance, unless the assessments collected for death benefits by the supreme lodge amount to at least three hundred dollars ($300.00) in one year: Beneficial fraternal orders, or societies incorporated under the laws of this State, which are conducted under the lodge system which have the supreme lodge or governing body located in this State, and which are so organized that the membership consists of members of subordinate lodges; that the subordinate lodges accept for membership only residents of the county in which such subordinate lodge is located; that each subordinate lodge issues certificates, makes assessments, and collects a fund to pay benefits to the widows and orphans of its own deceased members and their families, each lodge independently of the others, for itself and independently of the supreme lodge; that each lodge controls the fund for this purpose; that in addition to the benefits paid by each subordinate lodge to its own members, the supreme lodge provides for an additional benefit for such of the members of the subordinate lodges as are qualified, at the option of the subordinate lodge members; that such organization is not conducted for profit, has no capital stock, and has been in operation for 10 years in this State.

The Commissioner of Insurance may require the chief or presiding officer, or the secretary, to file annually an affidavit that such organization is entitled to this exemption. (1987, c. 483, s. 2.)

§ 58-340.58. Insurance on children.

Any fraternal order or society authorized pursuant to this Article to do business in this State and operating on the lodge plan may provide in its constitution and bylaws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of one and 16 years at next birthday, for whose support and maintenance a member of such order or society is responsible. The order or society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the order or society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: one year, twenty dollars ($20.00); two years, fifty dollars ($50.00); three years, seventy-five dollars ($75.00); four years, one hundred dollars ($100.00); five years, one hundred twenty-five dollars ($125.00); six years, one hundred fifty dollars ($150.00); seven years, two hundred dollars ($200.00); eight years, two hundred fifty dollars ($250.00); nine years, three hundred dollars ($300.00); 10 years, four hundred dollars ($400.00); 11 years, five hundred dollars ($500.00); 12 years,

six hundred dollars ($600.00); 13 years, seven hundred dollars ($700.00); 14 years, eight hundred dollars ($800.00); 15 years, nine hundred dollars ($900.00); 16 years, one thousand dollars ($1,000). (1987, c. 483, s. 2.)

§ 58-340.59. Medical examination; certificates and contributions.

No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the order or society, nor shall any such benefit certificate be issued unless the order or society shall simultaneously put in force at least 500 such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below 500. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Mortality Table" or the "English Life Table Number Six," and a rate of interest not greater than four percent (4%) per annum, upon a higher standard or upon such mortality, morbidity, and interest standards permitted by the laws of this State for use by life insurance companies; but contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the bylaws; and extra contributions shall be made if the reserves hereafter provided for become impaired. (1987, c. 483, s. 2.)

§ 58-340.60. Reserve fund; exchange of certificates.

Any order or society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the order or society for computing contributions as provided in G.S. 58-340.58, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the order or society, and shall not be liable for nor used for the payment of the debts and obligations of the order or society other than the benefits herein authorized. An order or society may provide that when a child reaches the minimum age for initiation into membership in such order or society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the order or society: Provided, that such surrender will not reduce the number of lives insured below 500; and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. (1987, c. 483, s. 2.)

§ 58-340.61. Separation of funds.

An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Commissioner of Insurance by an order or society availing itself of the provisions hereof. The separation of assets, funds, and liabilities required hereby shall not be terminated, rescinded, or modified, nor shall the funds be diverted for any use other than as specified in the preceding section, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition or the status of the order or society. (1987, c. 483, s. 2.)

§ 58-340.62. Payments to expense or general fund.

Any order or society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the order or society, as its constitution and bylaws may provide. (1987, c. 483, s. 2.)

§ 58-340.63. Continuation of certificates.

In the event of the termination of membership in the order or society by the person responsible for the support of any child on whose account a certificate may have been issued as provided herein, the certificate may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child who shall assume the payment of the required contributions. (1987, c. 483, s. 2.)

§ 58-340.64. Appointment of trustees to hold property.

The lodges of Masons, Odd Fellows, Knights of Pythias, camps of Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, Young Men's Christian Associations, Young Women's Christian Associations and other benevolent or fraternal orders and societies may appoint from time to time suitable persons trustees of their bodies or societies, in such manner as they deem proper, which trustees, and their successors, shall have power to receive, purchase, take, and hold property, real and personal, in trust for such society or body. The trustees shall have power, when instructed so to do by resolution adopted by the order, society or body which they represent, to mortgage or sell and convey in fee simple any real or personal property owned by the order, society or body; and the conveyances so made by the trustees shall be effective to pass the property in fee simple to the purchaser or to the mortgagee or trustee for the purposes in such conveyance or mortgage expressed. If there shall be no trustee, then any real or personal property which could be held by such trustees shall vest in and be held by such charitable, benevolent, religious, or fraternal orders and societies, respectively, according to such intent. (1987, c. 483, s. 2.)

§ 58-340.65. Unauthorized wearing of badges, etc.

Any person who fraudulently and willfully wears the badge or button of any fraternal organization or society, either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, or who fraudulently and willfully uses the name of any such order, society or organization, the titles of its officers, or its insignia, ritual, or ceremonies, unless entitled to wear or use the same under the constitution and bylaws, rules and regulations of such fraternal organization, society, or order, shall be deemed guilty of a misdemeanor, and shall upon conviction, be punished by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than 30 days, in the discretion of the court. (1987, c. 483, s. 2.)

§§ 58-340.66 to 58-340.70: Reserved for future codification purposes.

Article 31C.

Hull Insurance, and Protection and Indemnity Clubs.

§ 58-340.71. Short title.

This Article may be cited as the "Commercial Fishermen's Hull Insurance, and Protection and Indemnity Club Act". (1987, c. 330, s. 1.)

Editor's Note. — Session Laws 1987, c. 330, s. 2 makes this Article effective upon ratification. The act was ratified June 10, 1987.

§ 58-340.72. Definitions.

For purposes of this Article:

(1) "Association" means a trade or professional association that has been in existence for at least five years, and has adopted a written constitution, and a written set of bylaws, and was created for purposes other than for participating in a club.

(2) "Club" means a commercial fishermen's hull insurance and protection and indemnity club created under this Article.

(3) "Commercial fisherman" means any individual, corporation, or other business entity whose earned income is at least fifty percent (50%) derived from taking and selling food resources living in any ocean, bay, river, gulf, estuary, tidal wetlands, spoil area, estuation exit or entrance, or any other body of water or tidal wetlands from which a commercial harvest of fish may be taken.

(4) "Hull Insurance and Protection and Indemnity" means:

a. Insurance against loss or damage to a vessel's hull, lifeboats, rafts, and other operating equipment of the vessel other than its electrical machinery; and

b. Insurance against loss of life, personal injury, or illness to the master, the crew, and other third parties, and

against damage to any other vessel or property, such as cargo, for which the insured is legally liable. (1987, c. 330, s. 1.)

§ 58-340.73. Commercial Fishermen Hull Insurance, and Protection and Indemnity Clubs authorized.

In addition to other authority granted under this Chapter, ten or more commercial fishermen who are members of an association may enter into contracts or agreements under this Article for the joint protection and retention of their risk for Hull Insurance, and Protection and Indemnity, and for the payment of losses or claims made against any member. Any group of commercial fishermen intending to organize and operate a Club under this Article shall give the Commissioner 30 days' advance written notification of its intention in a form prescribed by the Commissioner. (1987, c. 330, s. 1.)

§ 58-340.74. Board of trustees.

(a) A Club shall be operated by a board of trustees. Each trustee shall also be a member of an association. The trustees shall be selected by the Club members under the rules of organization of the Club. The board of trustees shall:

(1) Establish the terms and conditions of hull insurance and protection and indemnity coverage within the Club, including underwriting and exclusions of coverage;
(2) Ensure that all valid claims are paid promptly;
(3) Take all necessary precautions to safeguard the assets of the Club;
(4) Maintain minutes of its meeting and make those minutes available to the Commissioner;
(5) Designate an administrator to carry out the policies established by the trustees; and
(6) Establish guidelines for membership in the Club.

(b) The board of trustees shall not:

(1) Extend credit to an individual member for payment of a premium, except under a payment plan approved by the Commissioner; or
(2) Borrow money from the Club, or in the name of the Club, except in the ordinary course of business.

Whenever the board of trustees borrow money from the Club as authorized by this subdivision it shall first advise the Commissioner of the nature and purpose of the loan, and shall obtain his prior approval of such loan. (1987, c. 330, s. 1.)

§ 58-340.75. Mutual agreement for indemnification.

(a) An agreement made under this Article shall contain provisions for:

(1) A system or program of loss control;

(2) The termination of membership;

(3) The payment by the Club of all claims for which a member incurred liability during the period of his membership;

(4) The non-payment of claims where a member has individually retained the risk, or where the risk is not specifically covered, or where the amount of the claim exceeds the coverage provided by the Club;

(5) The assessment of members;

(6) The payment of contributions from members to satisfy deficiencies;

(7) The maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses; and

(8) Final accounting and settlement of the obligations or refunds to a terminating member when all incurred claims are settled.

(b) The agreement required by this section may also include provisions authorizing the Club to:

(1) To establish offices where necessary in this State, and employ necessary staff to carry out its purposes;

(2) Retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deem to be necessary;

(3) Amend or repeal its bylaws;

(4) Purchase, lease, or rent real and personal property as it deems necessary; and

(5) Enter into agreements with financial institutions that permit it to issue checks or other negotiable instruments in its own name. (1987, c. 330, s. 1.)

§ 58-340.76. Termination of Club membership; notice.

If a member fails to pay his contributions calls, or assessment, or other property required by the board of trustees as authorized by this Article, he shall not be entitled to any hull insurance and protection and indemnity coverage under this Article, and the Club may terminate his membership upon giving the member at least 10 days' notice. The Club may terminate a membership for any other reason upon giving the member at least 90 days' written notice of the termination. A member may terminate his membership with the Club upon giving at least 90 days' written notice of the termination. (1987, c. 330, s. 1.)

§ 58-340.77. Financial monitoring and evaluation of clubs.

Each club shall be audited annually, at the Club's expense, by a certified public accounting firm. A copy of the audit report shall be furnished to each member, and to the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expenses reserves of the Club, including estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-16 (examination of companies by the Commissioner before authority to transact business granted), G.S. 58-17 (affidavit of compliance with law required), G.S. 58-18.1 (immunity from liability for reporting insurance fraud), G.S. 58-21 (annual, semiannual, or quarterly statements filed with the Commissioner), G.S. 58-22 (punishment for false statement), G.S. 58-25 (making and keeping business records for the Commissioner's inspection), G.S. 58-25.1 (Commissioner's authority to require special reports), G.S. 58-27 (exhibition of books, accounts and other papers to the Commissioner), and G.S. 58-63 (Commissioner authorized to collect and pay fees and charges for examination to State Treasury) shall apply to each Club and to persons that administer the Clubs. (1987, c. 330, s. 1.)

§ 58-340.78. Insolvency or impairment of Club.

(a) If an annual audit or an examination by the Commissioner reveals that the assets of a Club are insufficient to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and board of trustees of the Club's deficiency; and he shall recommend the measures to be taken in order to abate the deficiency. He may recommend that the Club refrain from adding new members until the deficiency is abated. If the Club fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the Club to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the Club.

(b) If a Club is determined to be insolvent, financially impaired, or is otherwise unable to discharge its legal liabilities and other obligations, each member shall be assessed on a pro rata basis as provided under G.S. 58-340.4. (1987, c. 330, s. 1.)

§ 58-340.79. Immunity of administrators and boards of trustees.

There is no liability on the part of and no cause of action arises against any board of trustees established under this Article, or against any administrator appointed as their representative, or any Club, its members or its employees, agents, contractors, or subcontractors for any good faith action taken by them in the performance

of their powers and duties in creating or administering any Club under this Article. (1987, c. 330, s. 1.)

SUBCHAPTER VIII. CREDIT LIFE, CREDIT ACCIDENT AND HEALTH, AND CREDIT PROPERTY INSURANCE.

Article 32.

Regulation of Credit Life Insurance, Credit Accident and Health Insurance and Credit Property Insurance.

§ 58-341. Application of Article.

All credit life insurance and all credit accident and health insurance as defined herein and written in connection with direct loans, consumer credit installment sale contracts of whatever term permitted by G.S. 25A-33, leases, or other credit transactions shall be subject to the provisions of this Article, except credit insurance written in connection with direct loans of more than 15 years' duration. The provisions of this Article shall be controlling as to such insurance and no other provisions of this Chapter shall be applicable unless otherwise specifically provided; nor shall such insurance be subject to the provisions of this Article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

This Article may be cited as "The North Carolina Act for the Regulation of Credit Life, Credit Accident and Health, and Credit Property Insurance." (1975, c. 660, s. 1; 1987, c. 826, ss. 1, 12.)

Editor's Note. — Session Laws 1987, c. 826, s. 11, effective January 1, 1988, rewrote the title of Subchapter VIII, which formerly read: "Credit Life Insurance and Credit Accident and Health Insurance."

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, inserted "leases" and substituted "15" for "10" in the first sentence of the first paragraph, rewrote the second paragraph.

§ 58-342. Definitions.

As used in this Article, unless the context requires otherwise, the following words or terms shall have the meanings herein ascribed to them, respectively:

(5) "Creditor" means any lender of money or vendor or lessor of goods, services, property, rights or privileges, including any person that directly or indirectly provides credit in connection with any such sale or lease, for which payment is arranged through a credit-related transaction; or any successor to the right, title or interest of any such lender, vendor, lessor, or person extending credit, and an affiliate, associate, or subsidiary of any of them, or any director,

officer, or employee of any of them or any other person in any way associated with any of them;

(8) "Joint life coverage" means credit life insurance covering two or more lives, the entire amount of insurance being payable upon the death of the first insured debtor to die;

(9) "Lease" means a contract whereby the lessee of a "motor vehicle," as defined in G.S. 20-4.01(23), contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property, but not exceeding the term of years in G.S. 58-341. (1975, c. 660, s. 1; 1987, c. 826, ss. 2, 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, rewrote subdivision (5), and added subdivision (9).

§ 58-349. Credit life insurance rate standards.

(c) If premiums are payable in one sum in advance, for decreasing term life insurance on indebtedness repayable in substantially equal monthly installments, a premium not exceeding seventy cents (70¢) per one hundred dollars ($100.00) of initial insured indebtedness per year is authorized.

(e) For level term life insurance, a premium rate of one dollar and thirty cents ($1.30) per one hundred dollars ($100.00) per year is authorized.

(f1) Notwithstanding the premium rates otherwise set forth in this section for credit life insurance, the premium rates for such insurance written in connection with direct loans with contractual commitments of more than 10 years' duration shall be filed with and approved by the Commissioner. Such premium rates shall exhibit a reasonable relationship to the benefits provided.

(h) In addition to the premium rate authorized, a charge may also be made for a nonrefundable origination fee per credit life insurance transaction as set forth below:

Insured Indebtedness	*Fee Permitted*
less than $250.00	none
$250.00 or more but less than $500.00	$1.00
more than $500.00	$2.00

No third or subsequent origination fee may be charged in connection with a third or subsequent refinancing within any twelve-month period. (1975, c. 660, s. 1; 1987, c. 826, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, substituted "seventy cents (70¢)" for "eighty cents (80¢)" in subsection (c) substituted "one dollar and thirty cents ($1.30)" for "one dollar and fifty cents ($1.50)" in subsection (e), and added subsections (f1) and (h).

§ 58-350. Credit accident and health insurance rate standards.

(d) If premiums are payable in one sum in advance for the entire duration of the indebtedness, for insurance with a preexisting exclusion as defined above, the following premiums are authorized:

Single Premium Rates per $100.00 of Initial Insured Indebtedness

No. of Months in which Indebtedness is Repayable	*Nonretroactive Benefits*		*Retroactive Benefits*		
	14-Day	*30-Day*	*7-Day*	*14-Day*	*30-Day*
12	1.40	.95	2.60	2.10	1.40
24	1.90	1.40	3.50	2.85	1.90
36	2.40	1.90	4.35	3.65	2.40
48	2.85	2.40	5.25	4.40	2.85
60	3.35	2.85	6.10	5.20	3.35
72	3.85	3.35		5.95	3.85
84	4.30	3.85		6.70	4.30
96	4.80	4.30		7.50	4.80
108	5.25	4.80		8.25	5.25
120	5.75	5.25		9.00	5.75

For terms other than the above, premiums shall be prorated.

(e1) Notwithstanding the premium rates otherwise set forth in this section for credit accident and health insurance, the premium rates for such insurance written in connection with direct loans with contractual commitments of more than 10 years' duration shall be filed with and approved by the Commissioner. Such premium rates shall exhibit a reasonable relationship to the benefits provided.

(g) In addition to the premium rate authorized, a charge may also be made for a nonrefundable origination fee per credit accident and health insurance transaction as set forth below:

Insured Indebtedness	*Fee Permitted*
less than $250.00	none
$250.00 or more but less than $500.00	$1.00
$500.00 or more	$2.00

No third or subsequent origination fee may be charged in connection with a third or subsequent refinancing within any twelve-month period. (1975, c. 660, s. 1; 1981, c. 759, ss. 2, 4-6, 9; 1987, c. 826, ss. 6, 7, 14.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, rewrote subsection (d) and added subsections (e1) and (g).

§ 58-354. Existing insurance; choice of insurer.

Credit life insurance and credit accident and health insurance may not be required of any borrower by any creditor. When credit property insurance is required for any indebtedness, the debtor shall be notified in writing of the option of furnishing the required amount of insurance through existing policies owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this State. (1975, c. 660, s. 1; 1987, c. 826, s. 8.)

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, rewrote this section.

§ 58-357. Penalties.

In addition to any other penalty provided by law, any person, firm or corporation which willfully violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of North Carolina a sum not to exceed one thousand dollars ($1,000) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed five thousand dollars ($5,000). The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such willful violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in G.S. 58-356. Any creditor who requires credit life insurance or credit accident and health insurance, or both, in excess of the amounts set forth in G.S. 58-344 or who violates the provisions of G.S. 58-354 shall be guilty of a misdemeanor, the penalty for which shall be a fine of two thousand dollars ($2,000) for each such occurrence or violation. (1975, c. 660, s. 1; 1985, c. 666, s. 32.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, substituted "one thousand dollars ($1,000)" for "two hundred fifty dollars ($250.00)" and "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the first sentence and substituted "two thousand dollars ($2,000)" for "five hundred dollars ($500.00)" in the last sentence.

§ 58-359. Credit property insurance.

(b) Premium rates charged shall not exceed eighty-seven cents (87¢) per year per one hundred dollars ($100.00) of insured value for single interest credit property insurance and shall not exceed one dollar and thirty-one cents ($1.31) per year per one hundred dollars ($100.00) of insured value for dual interest credit property insurance. The insured value shall not exceed the lesser of the value of the property or the amount of the initial indebtedness.

In addition to the premium rate authorized, a charge may also be made for a nonrefundable origination fee per credit property insurance transaction as set forth below:

Insured Value	*Fee Permitted*
less than $250.00	none
$250.00 or more but less than $500.00	$1.00
$500.00 or more	$2.00

No third or subsequent origination fee may be charged in connection with the third or subsequent refinancing within any twelve-month period.

The Department shall collect data on credit property insurance written in North Carolina, including but not limited to: the amount of coverage written, direct premiums, earned premiums, dividends and retrospective rate credits paid, direct losses paid, direct losses incurred, commissions paid, loss ratios and policy provisions. (1981, c. 759, s. 7; 1987, c. 826, s. 9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, substituted the present first and second paragraphs of subsection (b) for a former first paragraph thereof.

SUBCHAPTER IX. MISCELLANEOUS PROVISIONS.

ARTICLE 33.

Readable Insurance Policies.

§ 58-364. Title.

Editor's Note. — Session Laws 1985, c. 666, s. 47 redesignated Subchapter IX, which formerly was headed "Readable Insurance Policies," as "Miscellaneous Provisions."

§ 58-366. Scope of application.

(b) Nothing in this Article applies to:

(1) Any policy that is a security subject to federal jurisdiction;

(2) Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy, nor any group policy delivered or issued for delivery outside of this State; however, this does not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this State;

(3) Any group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(4) Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this Article;

(5) The renewal of a policy delivered or issued for delivery prior to the date such policy must be approved under this Article; nor

(6) Insurers who issue benefit booklets on group and nongroup bases for the policies described in G.S. 58-371(a)(2). In such cases, the provisions of this Article apply to the benefit booklets furnished to the persons insured.

(7) Insurance on farm buildings (other than farm dwellings and their appurtenant structures); farm personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles unless insured under policies covering nonfleet private passenger motor vehicles; nonfleet private passenger motor vehicles insured under a commercial motor vehicle insurance policy when combined with a commercial risk; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

(1979, c. 755, s. 1; 1981, c. 888, s. 6; 1983, c. 393, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective May 26, 1983, inserted "nonfleet private passenger motor vehicles insured under a commercial motor vehicle insurance policy when combined with a commercial risk" in subdivision (b)(7).

§ 58-367. Definitions.

As used in this Article, unless the context clearly indicates otherwise:

(5) "Insurer" means every person entering insurance policies or contracts as a principal, as described in G.S. 58-2(3).

(1979, c. 755, s. 1; 1987, c. 864, s. 10.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "G.S. 58-2(3)" for "G.S. 58-2(2)" in subdivision (5).

§ 58-371. Application to policies; dates; duties of the Commissioner.

(a) The filing requirements of G.S. 58-370 apply as follows:

(1) As described in Article 12B of this Chapter, to all policies of private passenger nonfleet motor vehicle insurance except as excluded by G.S. 58-366(b)(7), to all policies of insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein, and other insurance coverages written in connection with the sale of such property insurance except as excluded in G.S. 58-366(b)(7), that are made, issued, amended, or renewed after March 1, 1981; and

(2) To all policies of life insurance as described in Article 22 of this Chapter, to all benefit certificates issued by fraternal orders and societies as described in Subchapter VII of this

Chapter, to all policies of accident and health insurance as described in Subchapter VI of this Chapter, to all subscribers' contracts of hospital, medical, and dental service corporations as described in General Statutes Chapter 57, and to all health maintenance organization evidences of coverage as described in General Statutes Chapter 57B, that are made, issued, amended, or renewed after July 1, 1983.

(1979, c. 755, s. 1; 1979, 2nd Sess., c. 1161, s. 3; 1981, c. 888, s. 7; 1983, c. 393, s. 2; 1987, c. 864, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective May 26, 1983, inserted "except as excluded by G.S. 58-366(b)(7)" in subdivision (a)(1).

The 1987 amendment, effective August 14, 1987, substituted "57B" for "57A" in subdivision (a)(2).

Article 34.

Insurance Information and Privacy Protection Act.

§ 58-380. Short title.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 58-383. (Effective February 1, 1988) Definitions.

As used in this Article:

(1) "Adverse underwriting decision" means:

a. Any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

1. A declination of insurance coverage;
2. A termination of insurance coverage;
3. Failure of an agent to apply for insurance coverage with a specific insurance institution that an agent represents and that is requested by an applicant;
4. In the case of a property or casualty insurance coverage:
   I. Placement by an insurance institution or agent of a risk with a residual market mechanism or an unauthorized insurer, or
   II. The charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished; or
5. In the case of a life or accident and health insurance coverage, an offer to insure at higher than standard rates.

b. Notwithstanding subdivision (1)a of this section, the following actions shall not be considered adverse underwriting decisions, but the insurance institution or agent responsible for their occurrence shall neverthe-

§ 58-383 has a delayed effective date. See notes for date.

less provide the applicant or policyholder with the specific reason or reasons for their occurrence:

1. The termination of an individual policy form on a class or statewide basis;
2. A declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or
3. The rescission of a policy.

(2) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Agent" shall have the meaning as set forth in Article 45 of this Chapter and shall include limited representatives, surplus lines licensees, salesmen, or representatives of a medical, surgical, hospital, dental, or optometric service plan, and salesmen or representatives of a health maintenance organization.

(4) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(5) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(6) "Consumer reporting agency" means any person who:

a. Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;
b. Obtains information primarily from sources other than insurance institutions; and
c. Furnishes consumer reports to other persons.

(7) "Control," including the terms "controlled by" or "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(8) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(9) "Individual" means any natural person who:

a. In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder;
b. In the case of life or accident and health insurance, is a past, present, or proposed principal insured or certificate holder;
c. Is a past, present or proposed policy owner;
d. Is a past or present applicant;
e. Is a past or present claimant; or

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f. Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this Article.

(10) "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than:
a. An agent;
b. The individual who is the subject of the information; or
c. A natural person acting in a personal capacity rather than in a business or professional capacity.

(11) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations and medical, surgical, hospital, dental, and optometric service plans, governed by Chapters 57 and 57B. "Insurance institution" shall not include agents or insurance-support organizations.

(12) "Insurance-support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including: (i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction; or (ii) the collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity; provided, however, the following persons shall not be considered "insurance-support organizations" for purposes of this Article: agents, governmental institutions. insurance institutions, medical-care institutions, and medical professionals.

(13) "Insurance transaction" means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails:
a. The determination of an individual's eligibility for an insurance coverage, benefit, or payment; or
b. The servicing of an insurance application, policy, contract, or certificate.

(14) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

(15) "Life insurance" includes annuities.

(16) "Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled

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nursing facilities, home-health agencies, medical clinics, rehabilitation agencies, public health agencies, or health-maintenance organizations.

(17) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, chiropractor, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, pharmacist, or speech therapist.

(18) "Medical-record information" means personal information that:

a. Relates to an individual's physical or mental condition, medical history, or medical treatment; and

b. Is obtained from a medical professional or medical-care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(19) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and medical-record information, but does not include privileged information.

(20) "Policyholder" means any person who:

a. In the case of individual property or casualty insurance, is a present named insured;

b. In the case of individual life or accident and health insurance, is a present policy owner; or

c. In the case of group insurance that is individually underwritten, is a present group certificate holder.

(21) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

a. Pretends to be someone he is not;

b. Pretends to represent a person he is not in fact representing;

c. Misrepresents the true purpose of the interview; or

d. Refuses to identify himself upon request.

(22) "Privileged information" means any individually identifiable information that (i) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual, and (ii) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual: Provided, however, information otherwise meeting the requirements of this subsection shall nevertheless be considered personal information under this Article if it is disclosed in violation of G.S. 58-394.

(23) "Residual market mechanism" means any reinsurance facility, joint underwriting association, assigned risk plan, or other similar plan established under the laws of this State.

(24) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any

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reason other than the failure to pay a premium as required by the policy.

(25) "Unauthorized insurer" means an insurance institution that has not been granted a license by the Commissioner to transact the business of insurance in this State. (1981, c. 846, s. 1; 1987, c. 629, s. 13.)

For this section as in effect until February 1, 1988, see the main volume.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, substituted "the meaning as set forth in Article 45 of this Chapter" for "the meanings as set forth in G.S. 58-39.4," inserted "limited representatives," and substituted "surplus lines licensee" for "surplus lines brokers" in subdivision (3).

§ 58-394. Disclosure limitations and conditions.

An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

(17) To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction; or

(18) To a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance; provided that the information disclosed is limited to that which is reasonably necessary to permit such person to protect its interest in such policy; or

(19) To authorized personnel of the Division of Motor Vehicles upon requests pursuant to G.S. 20-309(c) or G.S. 20-309(f). (1981, c. 846, s. 1; 1985, c. 666, s. 68.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, inserted "or" at the end of subdivision (17), substituted a semicolon and "or" for the period at the end of subdivision (18), and added subdivision (19).

§ 58-397. Service of process; insurance-support organizations.

For the purpose of this Article, an insurance-support organization transacting business outside this State that has an effect on a person residing in this State shall be deemed to have appointed the Commissioner to accept service of process on its behalf. The provisions of G.S. 58-153 and 58-154 shall apply to service of process under this section, except that such service shall be mailed to the insurance-support organization at its last known principal place of business. (1981, c. 846, s. 1; 1985, c. 666, s. 9.)

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, deleted "provided the Commissioner causes a copy of such service to be mailed forthwith by registered mail to the insurance-support organization at its last known principal place of business" at the end of the present first sentence, and rewrote the second sentence, which read: "The Commissioner shall file an affidavit of compliance with the requirements of this section with the

other papers in the proceeding giving rise to such service."

§ 58-403. Obtaining information under false pretenses.

Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent, or insurance-support organization under false pretenses shall, upon conviction, be guilty of a misdemeanor and be fined not more than ten thousand dollars ($10,000) or imprisoned for not more than one year, or both. (1981, c. 846, s. 1; 1985, c. 666, s. 33.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, inserted "upon conviction, be guilty of a misdemeanor and" and substituted "imprisoned for not more than" for "imprisoned for more than."

§§ 58-405 to 58-409: Reserved for future codification purposes.

Article 35.

Asset Protection Act.

§ 58-410. Title.

This Article shall be known and may be cited as the "Asset Protection Act." (1985, c. 327, s. 1.)

Editor's Note. — Session Laws 1985, c. 327, s. 2 makes this Article effective Oct. 1, 1985.

§ 58-411. Purposes.

The purposes of this Article are to require insurers to maintain unencumbered assets in amounts equal to reserve liabilities; to provide preferential claims against insurers' assets in favor of owners, beneficiaries, assignees, and holders of insurance policies and certificates; and to prevent the pledging, hypothecation, or encumbrance of assets in excess of certain amounts without a prior written order of the Commissioner. (1985, c. 327, s. 1.)

§ 58-412. Scope.

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under this Chapter and General Statutes Chapter 57. This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to county farm mutual companies. (1985, c. 327, s. 1.)

§ 58-413. Definitions.

As used in this Article:

(1) "Assets" means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.

(2) "Claimants" means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.

(3) "Reserve assets" means those assets of an insurer that are authorized investments for policy reserves in accordance with this Chapter and G.S. 57-8.

(4) "Reserve liabilities" means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with this Chapter and G.S. 57-8. (1985, c. 327, s. 1.)

§ 58-414. Exception.

(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those reserve liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

(1) The ceding insurer and the reinsurer are both licensed to transact business in this State;

(2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the reserve liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in a trust account for that purpose and under those conditions with a State or national bank domiciled in this State.

(b) The Commissioner has the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with his authority to make examinations of insurers as conferred by other provisions of this Chapter. (1985, c. 327, s. 1.)

§ 58-415. Prohibition of hypothecation.

(a) Every insurer subject to this Article shall at all times have and maintain free and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon application made to him, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a

finding that the pledging, hypothecation, or encumbrance will not adversely affect the solvency of the insurer.

(b) Any insurer that pledges, hypothecates, or otherwise encumbers any of its assets shall within 10 days thereafter report in writing to the Commissioner the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of the transaction. In addition, the insurer shall file, along with its statement under G.S. 58-21, a statement sworn to by the chief executive officer of the insurer that: (i) Title to assets in an amount equal to the reserve liability of the insurer that are not pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of the transaction of the pledge, hypothecation, or encumbrance are as reported in such sworn statement.

(c) Any person that accepts a pledge, hypothecation, or encumbrance of any asset of an insurer, as security for a debt or other obligation of the insurer, not in accordance with this Article, is deemed to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of claimants: Provided, that said lien does not apply to the assets of an insurer in a delinquency proceeding under Article 17A of this Chapter if the Commissioner or the court, whichever is appropriate, approves the pledge, hypothecation, or encumbrance of the assets.

(d) In the event of the liquidation of any insurer subject to this Article, claimants of the insurer shall have a prior and preferential claim against all assets of the insurer except those that have been pledged, hypothecated, or encumbered in accordance with this Article. Subject to G.S. 58-155.15(a), all claimants have equal status; and their prior and preferential claims are superior to any claim or cause of action against the insurer by any other person. (1985, c. 327, s. 1.)

§§ 58-416 to 58-419: Reserved for future codification purposes.

Article 36.

Surplus Lines Act.

§ 58-420. Short title.

This Article shall be known and may be cited as the "Surplus Lines Act". (1985, c. 688, s. 1.)

Editor's Note. — Session Laws 1985, c. 688, s. 4 makes this Article effective upon ratification. The act was ratified July 11, 1985.

§ 58-421. Purposes; necessity for regulation.

This Article shall be liberally construed and applied to promote its underlying purposes, which include:

(1) Protecting persons in this State seeking insurance;

(2) Permitting surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers and exported from this State pursuant to this Article;

(3) Establishing a system of regulation that will permit orderly access to surplus lines insurance in this State and encourage admitted insurers to provide new and innovative types of insurance available to consumers in this State; and

(4) Protecting revenues of this State. (1985, c. 688, s. 1.)

§ 58-422. (Effective until February 1, 1988) Definitions.

As used in this Article:

(1) "Admitted insurer" means an insurer licensed to do an insurance business in this State.

(2) "Capital", as used in the financial requirements of G.S. 58-424, means funds paid in for stock or other evidence of ownership.

(3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-424.

(4) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. This definition includes insurance exchanges authorized under the laws of various states.

(6) "Producing broker" means an agent or broker licensed under Article 3 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.

(7) "Surplus", as used in the financial requirements of G.S. 58-424, means funds over and above liabilities and capital of the company for the protection of policyholders.

(8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-54.21, life and accident or health insurance, and annuities.

(9) "Surplus lines licensee" means a person licensed under G.S. 58-433 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.

(10) "Wet marine and transportation insurance" means:

a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

§ 58-422 is set out twice. See headings for effective dates.

b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 1027, s. 45; 1987, c. 727, s. 6.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 58-422.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, inserted "insurance" preceding "independently procured" in subdivision (8).

Session Laws 1987, c. 727, s. 6, effective August 5, 1987, inserted "pursuant to G.S. 58-54.21" in subdivision (8).

§ 58-422. (Effective February 1, 1988) Definitions.

As used in this Article:

(1) "Admitted insurer" means an insurer licensed to do an insurance business in this State.

(2) "Capital", as used in the financial requirements of G.S. 58-424, means funds paid in for stock or other evidence of ownership.

(3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-424.

(4) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. This definition includes insurance exchanges authorized under the laws of various states.

(6) "Producing broker" means an agent or broker licensed under Article 45 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.

(7) "Surplus", as used in the financial requirements of G.S. 58-424, means funds over and above liabilities and capital of the company for the protection of policyholders.

(8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and trans-

§ 58-422 is set out twice. See headings for effective dates.

portation insurance, insurance independently procured pursuant to G.S. 58-21, life and accident or health insurance, and annuities.

(9) "Surplus lines licensee" means a person licensed under G.S. 58-433 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.

(10) "Wet marine and transportation insurance" means:

a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters including transportation by land, water, or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c.1027, s. 45; 1987, c. 629, s. 19; c. 727, s. 6; c. 864, s. 73.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-422.

Effect of Amendments. — Session Laws 1987, c. 727, s. 6, effective August 5, 1987, inserted "pursuant to G.S. 58-54.21" in subdivision (8).

Session Laws 1987, c. 629, s. 19 and c. 864, s. 73, effective February 1, 1988, substituted "Article 45" for "Article 3" in subdivision (6).

§ 58-423. Placement of surplus lines insurance.

Insurance may be procured through a surplus lines licensee from nonadmitted insurers if:

(1) Each insurer is an eligible surplus lines insurer;

(2) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this State. Such full amount or kind of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this State; and

(3) All other requirements of this Article are met. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 1013, s. 5.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, rewrote subdivision (2).

§ 58-422 is set out twice. See headings for effective dates.

§ 58-424. Eligible surplus lines insurers required.

(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer, unless at the time of placement, such nonadmitted insurer:

(1) Has established satisfactory evidence of good repute and financial integrity; and

(2) Qualifies under one of the following subdivisions:

a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals this State's minimum capital and surplus requirements under G.S. 58-77.

In addition, an alien insurer qualifies under this subdivision if it maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than one million five hundred thousand dollars ($1,500,000) for the protection of all of its policyholders in the United States and such trust fund consists of cash, securities, letters of credit, or of investment of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; or

b. In the case of any Lloyd's or other similar unincorporated group of alien individual insurers, maintains a trust fund of not less than fifty million dollars ($50,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and

c. In the case of an "insurance exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than fifteen million dollars ($15,000,000) in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than one million five hundred thousand dollars ($1,500,000). In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)(a). of this section.

(3) Has caused to be provided to the Commissioner a copy of its current annual statement certified by such insurer; such statement to be provided no more than two months, and for

alien insurers six months, after the close of the period reported upon and that is either:

a. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or

b. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or

c. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(b) In addition to meeting the requirements in subdivisions (a)(1) through (a)(3) of this section, an insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the Commissioner. Nothing in this subsection shall require the Commissioner to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Commissioner or his employees or representatives for any action taken or not taken by them in the performance of their powers and duties under this subsection. (1985, c. 688, s. 1; c. 793; 1985 (Reg. Sess., 1986), c. 1027, s. 46.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 amendment, effective July 18, 1985, substituted "one million five hundred thousand dollars ($1,500,000)" for "four million five hundred thousand dollars ($4,500,000)" in paragraph (a)(2)a and inserted "and for alien insurers six months" in subdivision (a)(3).

The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, substituted "one million five hundred thousand dollars ($1,500,000)" for "four million five hundred thousand dollars ($4,500,000)" in subdivision (a)(2)c.

§ 58-425. Other nonadmitted insurers.

Only that portion of any risk eligible for export for which the full amount of coverage is not procurable from eligible surplus lines insurers may be placed with any other nonadmitted insurer that does not appear on the list of eligible surplus lines insurers published by the Commissioner pursuant to G.S. 58-424(b), but nonetheless meets the requirements set forth in G.S. 58-424(a)(1) through (a)(3) and any regulations of the Commissioner. The surplus lines licensee seeking to provide coverage through an unlisted nonadmitted insurer shall make a filing specifying the amount and percentage of each risk to be placed, and naming the nonadmitted insurer with which placement is intended. Within 30 days after the coverage has been placed, the producing broker or surplus lines licensee shall send written notice to the insured that the insurance, or a portion thereof, has been placed with such nonadmitted insurer. (1985, c. 688, s. 1.)

§ 58-426. Withdrawal of eligibility from a surplus lines insurer.

If at any time the Commissioner has reason to believe that an eligible surplus lines insurer:

(1) Is in unsound financial condition,
(2) Is no longer eligible under G.S. 58-424,
(3) Has willfully violated the laws of this State, or
(4) Does not make reasonably prompt payment of just losses and claims in this State or elsewhere, the Commissioner may declare it ineligible. The Commissioner shall promptly mail notice of all such declarations to each surplus lines licensee. (1985, c. 688, s. 1.)

§ 58-427. Duty to file evidence of insurance and affidavits.

Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall execute and file with the Commissioner:

(1) A written report regarding the insurance and including the following information:
   a. The name and address of the insured;
   b. The identity of the insurer or insurers;
   c. A description of the subject and location of the risk;
   d. The amount of premium charged for the insurance; and
   e. Such other pertinent information as the Commissioner may reasonably require; and
(2) An affidavit as to the efforts to place the coverage with admitted insurers and the results thereof in accordance with G.S. 58-423. The report and affidavit required by this section shall be completed on a standardized form or forms prescribed by the Commissioner. (1985, c. 688, s. 1; 1987, c. 864, s. 35.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "prescribed" for "furnished" in subdivision (2).

§ 58-428. Surplus lines advisory organizations.

(a) A surplus lines advisory organization of surplus lines licensees may be formed to:

(1) Facilitate and encourage compliance by its members with the laws of this State and the rules and regulations of the Commissioner relative to surplus lines insurance;
(2) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market; and
(3) Receive and disseminate to its members information relative to surplus lines coverages.

(b) Every such advisory organization shall file with the Commissioner:

(1) A copy of its constitution, articles of agreement or association, or certificate of incorporation;
(2) A copy of its bylaws and rules governing its activities;
(3) A current list of its members;

(4) The name and address of a resident of this State upon whom notices or orders of the Commissioner or processes issued at his direction may be served; and

(5) An agreement that the Commissioner may examine the advisory organization in accordance with the provisions of subsection (c) of this section.

(c) The Commissioner shall, at least once every three years, make or cause to be made an examination of each such advisory organization. The examination shall be governed by the provisions of G.S. 58-16, 58-16.2, 58-17, 58-18, 58-22, 58-25, 58-25.1, 58-26, and 58-27. If the advisory organization annually submits a certified financial statement to the Commissioner, the examination provided for in this subsection shall not be made more often than once every three years. If the Commissioner finds such advisory organization or any member thereof to be in violation of this Article, he may issue an order requiring the discontinuance of such violation.

(d) Each surplus lines licensee shall maintain active membership in an advisory organization as a condition of continued licensure under this Article. (1985, c. 688, s. 1.)

§ 58-429. Evidence of the insurance; changes; penalty.

(a) As soon as surplus lines insurance has been placed, the producing broker or surplus lines licensee shall promptly deliver the policy to the insured. If the policy is not then available, the broker or licensee shall promptly deliver to the insured a certificate described in subsection (d) of this section, cover note, binder, or other evidence of insurance. The certificate described in subsection (d), cover note, binder, or other evidence of insurance shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.

(b) No producing broker or surplus lines licensee shall issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer, or a nonadmitted insurer pursuant to G.S. 58-425, unless he has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that such insurance has been granted.

(c) If, after delivery of any such evidence of insurance there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the producing broker's or surplus lines licensee's original evidence of insurance, or in any other material as to the insurance coverage so evidenced, the producing broker or surplus lines licensee shall promptly issue and deliver to the insured an appropriate substitute for or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder.

(d) As soon as reasonably possible after the placement of any such insurance the producing broker or surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured to replace any evidence of insurance previously issued. Each certificate or policy of insurance shall contain or have attached thereto a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements, or any other material facts that would regularly be included in the policy.

(e) Any surplus lines licensee or producing broker who fails to comply with the requirements of this section shall be subject to the penalties provided in G.S. 58-441.

(f) Every evidence of insurance negotiated, placed, or procured under the provisions of this Article issued by the surplus lines licensee shall bear the name of the licensee and the following legend in 10 point type and in contrasting color: "The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund." (1985, c. 688, s. 1.)

§ 58-430. Duty to notify insured.

No contract of insurance placed by a surplus lines licensee under this Article shall be binding upon the insured and no premium charged therefor shall be due and payable until the producing broker or surplus lines licensee notifies the insured in writing, a copy of which shall be maintained by the broker or licensee with the records of the contract and available for possible examination, that:

(1) The insurer with which the coverage has been placed is not licensed by this State and is not subject to its supervision; and

(2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by any State insurance guaranty or solvency fund.

Nothing in this section shall nullify any agreement by any insurer to provide insurance. (1985, c. 688, s. 1.)

§ 58-431. Valid surplus lines insurance.

Insurance contracts procured under this Article shall be valid and enforceable as to all parties. (1985, c. 688, s. 1.)

§ 58-432. Effect of payment to surplus lines licensee.

A payment of premium to a surplus lines licensee acting for a person other than himself in negotiating, continuing, or reviewing any policy of insurance under this Article shall be deemed to be payment to the insurer, notwithstanding any conditions or stipulations inserted in the policy or contract. (1985, c. 688, s. 1.)

§ 58-433. (Effective until February 1, 1988) Licensing of surplus lines licensee.

(a) No agent or broker licensed by the Commissioner shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the Commissioner.

(b) The Commissioner shall issue a surplus lines license to any qualified holder of a current fire and casualty broker's or general agent's license, but only when the broker or agent has:

(1) Remitted the fifty dollars ($50.00) annual fee to the Commissioner;

(2) Submitted a completed license application on a form supplied by the Commissioner, and the application has been approved by the Commissioner;

(3) Passed a qualifying examination approved by the Commissioner; except that all holders of a license prior to July 11, 1985 shall be deemed to have passed such an examination; and

(4) Filed with the Commissioner, and maintains during the term of the license, in force and unimpaired a bond in favor of this State in the sum of ten thousand dollars ($10,000), aggregate liability, with corporate sureties approved by the Commissioner. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this Article and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least 30 days prior written notice is given to the licensee and Commissioner.

(c) Corporations shall be eligible to be resident surplus lines licensees, upon the following conditions:

(1) The corporate licensee shall list individuals within the corporation who have satisfied all requirements of this Article to become surplus lines licensees; and

(2) Only those individuals listed on the corporate license and who are surplus lines licensees shall transact surplus lines business.

(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one thousand dollars ($1,000) and be subject to such other penalties as provided by law.

(e) Any person who does not renew a surplus lines license and applies for another surplus lines license more than one year after the expiration date of the previous license shall be required to satisfy every condition in this section, including the written exam, before the Commissioner issues another surplus lines license to that person. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 6; c. 1013, ss. 4, 16; 1987, c. 752, s. 6.)

§ 58-433 is set out twice. See headings for effective dates.

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 58-433.

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986) c. 928, s. 6, effective September 1, 1986, substituted "ten thousand dollars ($10,000)" for "fifty thousand dollars ($50,000)" in the first sentence of subdivision (b)(4).

Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 4, effective September 1, 1986, rewrote subsection (d).

Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 16, effective July 15, 1986, inserted "and who are surplus lines licensees" in subdivision (c)(2).

The 1987 amendment, effective September 1, 1987, added subsection (e).

§ 58-433. (Effective February 1, 1988) Licensing of surplus lines licensee.

(a) No agent or broker licensed by the Commissioner shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the Commissioner.

(b) The Commissioner shall issue a surplus lines license to any qualified holder of a current fire and casualty broker's or agent's license, but only when the broker or agent has:

(1) Remitted the fifty dollars ($50.00) annual fee to the Commissioner;

(2) Submitted a completed license application on a form supplied by the Commissioner, and the application has been approved by the Commissioner;

(3) Passed a qualifying examination approved by the Commissioner; except that all holders of a license prior to July 11, 1985 shall be deemed to have passed such an examination; and

(4) Filed with the Commissioner, and maintains during the term of the license, in force and unimpaired a bond in favor of this State in the sum of ten thousand dollars ($10,000), aggregate liability, with corporate sureties approved by the Commissioner. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this Article and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least 30 days prior written notice is given to the licensee and Commissioner.

(c) Corporations shall be eligible to be resident surplus lines licensees, upon the following conditions:

(1) The corporate licensees shall list individuals within the corporation who have satisfied all requirements of this Article to become surplus lines licensees; and

(2) Only those individuals listed on the corporate license and who are surplus lines licensees shall transact surplus lines business.

(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of

§ 58-433 is set out twice. See headings for effective dates.

one thousand dollars ($1,000) and be subject to such other penalties as provided by law.

(e) Any person who does not renew a surplus lines license and applies for another surplus lines license more than one year after the expiration date of the previous license shall be required to satisfy every condition in this section, including the written exam, before the Commissioner issues another surplus lines license to that person. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 6; c. 1013, ss. 4, 16; 1987, c. 629, s. 18; c. 752, s. 6.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 58-433.

Effect of Amendments. — Session Laws 1987, c. 752, s. 6, effective September 1, 1987, added subsection (e).

Session Laws 1987, c. 629, s. 18, effective February 1, 1988, deleted "general" preceding "agent's license" in the introductory language of subsection (b).

§ 58-434. Surplus lines licensees may accept business from other agents or brokers.

A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other duly licensed agent or broker, and the surplus lines licensee may compensate such agent or broker therefor. (1985, c. 688, s. 1.)

§ 58-435. Records of surplus lines licensee.

Each surplus lines licensee shall keep in his office in this State a full and true record of each surplus lines insurance contract placed by or through him, including a copy of the policy, certificate, cover note, or other evidence of insurance, which record shall include the following items:

(1) Amount of the insurance and perils insured;
(2) Brief description of the property insured and its location;
(3) Gross premium charged;
(4) Any return premium paid;
(5) Rate of premium charged upon the several items of property;
(6) Effective date of the contract, and the terms thereof;
(7) Name and address of the insured;
(8) Name and address of the insurer;
(9) Amount of tax and other sums to be collected from the insured; and
(10) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

The record of each contract shall be kept open at all reasonable times to examination by the Commissioner without notice for a period not less than five years following termination of the contract. (1985, c. 688, s. 1.)

§ 58-436. Quarterly reports; summary of exported business.

On or before the end of January, April, July, and October of each year, each surplus lines licensee shall file with the Commissioner, on a form prescribed by the Commissioner, a verified report of all surplus lines insurance transacted during the preceding three months showing:

(1) Aggregate gross premiums written;
(2) Aggregate return premiums; and
(3) Amount of aggregate tax to be remitted. (1985, c. 688, s. 1; 1987, c. 864, s. 36.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "January, April, July, and October" for "March, June, September and December" and deleted "in duplicate" following "a verified report" in the introductory paragraph.

§ 58-437. Surplus lines tax.

(a) Gross premiums charged, less any return premiums, for surplus lines insurance are subject to a premium receipts tax of five percent (5%), which shall be collected by the surplus lines licensee as specified by the Commissioner, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the State to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax.

(b) At the same time that he files his quarterly report as set forth in G.S. 58-436, each surplus lines licensee shall pay the premium receipts tax due for the period covered by the report.

(c) This section does not apply to risks of State government agencies nor to risks of local government risk pools created and operating under Article 39 of this Chapter.

(d) The surplus lines licensee placing the insurance and claiming the exemption in subsection (c) of this section shall affirmatively show in writing to the Commissioner that the risk qualifies for the exemption. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 11; 1987, c. 727, ss. 2, 3; c. 864, s. 37.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, rewrote subsection (c), which read: "This section shall not apply to insurance of risks of the State government, its political subdivisions, or of any agency thereof."

Session Laws 1987, c. 864, s. 37, effective August 14, 1987, substituted "At the same time that he files" for "Within 20 days after filing" in subsection (b).

Session Laws 1987, c. 727, ss. 2 and 3, effective August 5, 1987, rewrote subsection (c) and added subsection (d).

§ 58-438. Collection of tax.

All provisions of Chapter 105 of the General Statutes, not inconsistent with this Article, relating to administration, auditing and making returns, the imposition and collection of tax and the lien thereon, assessments, refunds, and penalties, shall be applicable to the tax imposed by this Article; and with respect thereto, the Commissioner has the same power and authority as is given to the Secretary of Revenue under the provisions of Chapter 105 of the General Statutes. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 7.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, rewrote this section.

§ 58-439. Suspension, revocation or nonrenewal of surplus lines licensee's license.

The Commissioner may suspend, revoke, or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under G.S. 58-9.7 upon any one or more of the following grounds:

(1) Removal of the surplus lines licensee's office from this State;
(2) Removal of the surplus lines licensee's office accounts and records from this State during the period during which such accounts and records are required to be maintained under G.S. 58-435;
(3) Closing of the surplus lines licensee's office for a period of more than 30 business days, unless permission is granted by the Commissioner;
(4) Failure to make and file required reports;
(5) Failure to transmit the required tax on surplus lines premiums;
(6) Failure to maintain the required bond;
(7) Violation of any provision of this Article; or
(8) For any other cause for which an insurance license could be denied, revoked, suspended, or renewal refused under the Insurance Law. (1985, c. 688, s. 1.)

§ 58-440. Actions against surplus lines insurer; service of process.

(a) A surplus lines insurer may be sued upon any cause of action arising in this State, under any surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee, pursuant to the procedure provided in G.S. 58-153.1. Any such policy issued by the surplus lines licensee shall contain a provision stating the substance of this section and designating the person to whom the Commissioner shall mail process.

(b) Each surplus lines insurer engaging in surplus lines insurance shall be deemed thereby to have subjected itself to this Article.

(c) The remedies and procedures provided in this section are in addition to any other methods provided by law for service of process upon insurers. (1985, c. 688, s. 1.)

§ 58-441. Penalties.

(a) Any surplus lines licensee who in this State represents or aids a nonadmitted insurer in violation of this Article shall be guilty of a misdemeanor and subject to imprisonment or a fine, or both.

(b) In addition to any other penalty provided for in this section or otherwise provided by law, including any suspension, revocation, or refusal to renew a license, any person violating any provision of this Article shall be subject to a civil penalty, payment of restitution, or both, in accordance with G.S. 58-9.7. (1985, c. 688, s. 1.)

§§ 58-442 to 58-449: Reserved for future codification purposes.

Article 37.

Mandatory or Voluntary Risk Sharing Plans.

§ 58-450. Establishment of plans.

If the Commissioner finds, after a hearing held in accordance with G.S. 58-9.2, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-72(4) through G.S. 58-72(22) is not readily available in the voluntary market and that the public interest requires the availability of that insurance, he may either:

(1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or

(2) Call upon insurers to prepare plans for his approval. (1986, Ex. Sess., c. 7, s. 1.)

Cross References. — As to the expiration of this Article, see § 58-461.

Editor's Note. — Session Laws 1986, Extra Session, c. 7, s. 13 makes this Article effective upon ratification. Section 13 further provides: "Within 30 days after the effective date of this act the boards of directors of the FAIR Plan and the Beach Plan shall each submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.21(b) and G.S. 58-173.7, respectively." The act was ratified on February 18, 1986. A further provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act would expire on June 30, 1988. However, this provision was deleted by Session Laws 1987, c. 731, s. 1. As to the expiration of this Article, see now § 58-461.

Section 12 of Session Laws 1986, Extra Session, c. 7 is a severability clause.

§ 58-451. Purposes, contents, and operation of risk sharing plans.

(a) Each plan promulgated or prepared pursuant to G.S. 58-450 shall:

(1) Give consideration to:

a. The need for adequate and readily accessible coverage;

b. Optional methods of improving the market affected;

c. The inherent limitations of the insurance mechanism;

d. The need for reasonable underwriting standards; and

e. The requirement of reasonable loss prevention measures;

(2) Establish procedures that will create minimum interference with the voluntary market;

(3) Distribute the obligations imposed by the plan, and any profits or losses experienced by the plan, equitably and efficiently among the participating insurers; and

(4) Establish procedures for applicants and participants to have their grievances reviewed by an impartial body. The filing and processing of a grievance pursuant to this subdivision does not stay the requirement for participation in a plan mandated by G.S. 58-452.

(b) Each plan may, on behalf of its participants:

(1) Issue policies of insurance to eligible applicants;

(2) Underwrite, adjust, and pay losses on insurance issued by the plan;

(3) Appoint a service company or companies to perform the functions enumerated in this subsection; and

(4) Obtain reinsurance for any part or all of its risks. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-452. Persons required to participate.

(a) Each plan shall require participation:

(1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;

(2) By all agents licensed to represent those insurers for that kind of insurance; and

(3) By every rating organization that makes rates for that kind of insurance.

(b) The Commissioner shall exclude from each plan any person if participation would impair the solvency of that person. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-453. Voluntary participation.

Each plan may provide for participation by:

(1) Insurers that are not required to participate by G.S. 58-452;

(2) Eligible surplus lines insurers as defined in G.S. 58-422(3); or

(3) Reinsurers approved by the Commissioner. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-454. Classification and rates.

Each plan shall provide for:

(1) The method of classifying risks;

(2) The making and filing of rates which are not excessive, inadequate, or unfairly discriminatory and policy forms applicable to the various risks insured by the plan;

(3) The adjusting and processing of claims;

(4) The commission rates to be paid to agents or brokers for coverages written by the plan; and

(5) Any other insurance or investment functions that are necessary for the purpose of providing adequate and readily accessible coverage. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-455. Basis for participation.

Each plan shall specify the basis for participation by insurers, agents, rating organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-456. Duty to provide information.

Every participating insurer and agent shall provide to any person seeking the insurance available in each plan, information about the services prescribed in the plan, including full information on the requirements and procedures for obtaining insurance under the plan, whenever the insurance is not readily available in the voluntary market. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-457. Provision of marketing facilities.

If the Commissioner finds that the lack of participating insurers or agents in a geographic area makes the functioning of a plan difficult, he may order that the plan appoint agents on such terms as he designates or that the plan take other appropriate steps to guarantee that service is available. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-458. Voluntary risk sharing plans.

Insurers doing business within this State or reinsurers approved by the Commissioner may prepare voluntary plans that will provide any specific amount or kind of insurance or component thereof for all or any part of this State in which that insurance is not readily available in the voluntary market and in which the public interest requires the availability of the coverage. These plans shall be submitted to the Commissioner and, if approved by him, may be put into operation. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-459. Article not subject to Administrative Procedure Act.

The provisions of Chapter 150B of the General Statutes shall not apply to this Article, except that G.S. 150B-39 and G.S. 150B-41 shall apply to hearings conducted pursuant to G.S. 58-450. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-460. Immunity of Commissioner and plan participants.

There shall be no liability on the part of, and no cause of action shall arise against the Commissioner, his representatives, or any plan, its participants, or its employees for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this Article. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-461. Expiration.

This Article shall expire on July 1, 1989. (1987, c. 731, s. 2.)

Editor's Note. — Session Laws 1987, c. 731, s. 3 makes this section effective upon ratification. The act was ratified August 6, 1987.

§§ 58-462 to 58-469: Reserved for future codification purposes.

Article 38.

Insurance Regulatory Reform Act.

§ 58-470. Short title.

This Article is known and may be cited as the Insurance Regulatory Reform Act. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

Editor's Note. — Session Laws 1985 (Regular Session, 1986), c. 1027, s. 58, makes this Article effective September 1, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

§ 58-471. Legislative findings and intent.

(a) Due to conditions in national and international property and liability insurance markets, insureds in the United States have experienced unprecedented in-term cancellations of existing policies for entire books of business, have been afforded little or no notice that existing policies would not be renewed at their expiration dates, or would be renewed only at substantially higher rates or on less favorable terms. The General Assembly finds that such conditions pose an imminent peril to the public welfare for the following reasons:

(1) In-term cancellations of insurance coverages erode insureds' confidence and breach insureds' trust; unfairly and prematurely terminate the promised coverage; force persons to go without needed insurance protection or force the procurement of substitute insurance at greater cost; and create marketplace confusion resulting in product unavailability.

(2) Failures to provide timely notices of nonrenewals or of renewals with altered terms deprive persons of adequate opportunities to secure affordable replacement coverages or require persons to go without needed insurance protection.

(b) The General Assembly finds that there is no uniform requirement for the notice of cancellation, renewal, or nonrenewal for commercial property and liability insurance and that it should adopt reasonable requirements for such notices and should regulate in-term cancellations of entire books of business by companies. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§ 58-472. Scope.

(a) Except as otherwise provided, this Article applies to all kinds of insurance authorized by G.S. 58-72(4) through (14) and G.S. 58-72(18) through (22), and to all insurance companies licensed by the Commissioner to write those kinds of insurance. This Article does not apply to insurance written under Articles 12B, 18A, 18B, 25A or 36 of this Chapter; to marine insurance as defined in G.S. 58-131.36(3); to personal inland marine insurance; to aviation insurance; to policies issued in this State covering risks with multistate locations, except with respect to coverages applicable to locations within this State; to any town or county farmers mutual fire insurance association restricting its operations to not more than five counties in this State that are adjacent to the county in which its home office is located; nor to domestic insurance companies, associations, orders, or fraternal benefit societies doing business in this State on the assessment plan.

(b) This Article is not exclusive, and the Commissioner may also consider other provisions of this Chapter to be applicable to the circumstances or situations addressed in this Article. Policies may provide terms more favorable to insureds than are required by this Article. The rights provided by this Article are in addition to and do not prejudice any other rights the insured may have at common law, under statutes, or under administrative rules. (1985 (Reg. Sess., 1986), c. 1027, s. 14; 1987, c. 441, ss. 1, 2.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "to marine insurance as defined in G.S. 58-131.36(3); to" for "to marine and," deleted "nor" preceding "to policies issued in this State covering risks," and added the language beginning "to any town or county farmers mutual fire insurance association" and ending "fraternal benefit societies doing business in this State on the assessment plan" in the second sentence of subsection (a).

§ 58-473. Certain policy cancellations prohibited.

(a) No insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons:

(1) Nonpayment of premium in accordance with the policy terms;

(2) An act or omission by the insured or his representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining the policy, continuing the policy, or presenting a claim under the policy;

(3) Increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time of assumption of the risk;

(4) Substantial breach of contractual duties, conditions, or warranties that materially affects the insurability of the risk;

(5) A fraudulent act against the company by the insured or his representative that materially affects the insurability of the risk;

(6) Willful failure by the insured or his representative to institute reasonable loss control measures that materially af-

fect the insurability of the risk after written notice by the insurer;

(7) Loss of facultative reinsurance, or loss of or substantial changes in applicable reinsurance as provided in G.S. 58-476;

(8) Conviction of the insured of a crime arising out of acts that materially affect the insurability of the risk; or

(9) A determination by the Commissioner that the continuation of the policy would place the insurer in violation of the laws of this State;

(10) The named insured fails to meet the requirements contained in the corporate charter, articles of incorporation, or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance coverage in this State.

(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured, not less than 15 days before the proposed effective date of cancellation. The notice must be given or mailed to the insured, and any designated mortgagee or loss payee at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. The notice must state the precise reason for cancellation. Proof of mailing is sufficient proof of notice. Failure to send this notice to any designated mortgagee or loss payee invalidates the cancellation only as to the mortgagee's or loss payee's interest.

(c) This section does not apply to any insurance policy that has been in effect for less than 60 days and is not a renewal of a policy. That policy may be cancelled for any reason by furnishing to the insured at least 15 days prior written notice of and reasons for cancellation.

(d) Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation.

(e) Copies of the notice required by this section shall also be sent to the agent or broker of record; however, failure to send copies of the notice to such persons shall not invalidate the cancellation. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§ 58-474. Notice of nonrenewal, premium rate increase, or change in coverage required.

(a) No insurer may refuse to renew an insurance policy except in accordance with the provisions of this section, and any nonrenewal attempted or made that is not in compliance with this section is not effective. This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

(b) An insurer may refuse to renew a policy that has been written for a term of one year or less at the policy's expiration date by giving or mailing written notice of nonrenewal to the insured not less than 45 days prior to the expiration date of the policy.

(c) An insurer may refuse to renew a policy that has been written for a term of more than one year or for an indefinite term at the policy anniversary date by giving or mailing written notice of non-

renewal to the insured not less than 45 days prior to the anniversary date of the policy.

(d) Except as provided in G.S. 58-475, whenever an insurer lowers coverage limits or raises deductibles or premium rates other than at the request of the policyholder, the insurer shall give the policyholder written notice of such change at least 30 days in advance of the effective date of the change.

(e) The notice required by this section must be given or mailed to the insured and any designated mortgagee or loss payee at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. Proof of mailing is sufficient proof of notice. The notice of nonrenewal must state the precise reason for nonrenewal. Failure to send this notice to any designated mortgagee or loss payee invalidates the nonrenewal only as to the mortgagee's or loss payee's interest.

(f) Copies of the notice required by this section shall also be sent the agent or broker of record; however, failure to send copies of the notice to such persons shall not invalidate the nonrenewal. (1985 (Reg. Sess., 1986), c. 1027, s. 14; 1987, c. 441, ss. 3, 4.)

Effect of Amendments. — The 1987 amendment, effective August 1, 1987, inserted "rate" in the catchline, added present subsection (d), and redesignated former subsections (d) and (e) as present subsections (e) and (f).

§ 58-475. Notice of renewal of policies with premium rate or coverage changes.

(a) If an insurer intends to renew a policy, the insurer must furnish to the insured the renewal terms and a statement of the amount of premium due for the renewal policy period. This section applies only if the insurer intends to decrease coverage, increase deductibles, or increase the premium rate in the renewal policy.

(b) If the policy being renewed was written for a term of one year or less, the renewal terms and statement of premium due must be given or mailed not less than 45 days before the expiration date of that policy. If the policy being renewed was written for a term of more than one year or for an indefinite term, the renewal terms and statement of premium due must be given or mailed not less than 45 days before the anniversary date of that policy. The renewal terms and statement of premium due must be given or mailed to the insured and any designated mortgagee or loss payee at their addresses shown in the policy, or, if not indicated in the policy, at their last known addresses.

(c) If the insurer fails to furnish the renewal terms and statement of premium due in the manner required by this section, the insured may cancel the renewal policy within the 30-day period following receipt of the renewal terms and statement of premium due. For refund purposes, earned premium for any period of coverage shall be calculated pro rata upon the premium applicable to the policy being renewed instead of the renewal policy.

(d) If a policy has been issued for a term longer than one year, and for additional consideration a premium has been guaranteed for the entire term, it is unlawful for the insurer to increase that premium or require policy deductibles or other policy or coverage provisions less favorable to the insured during the term of the policy.

(e) Copies of the notice required by this section shall also be given or mailed to any designated mortgagee or loss payee and may also be given or mailed to the agent or broker of record. (1985 (Reg. Sess., 1986), c. 1027, s. 14; 1987, c. 441, ss. 5, 6.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, inserted "rate" in the catchline, and added the second sentence of subsection (a).

§ 58-476. Loss of reinsurance.

An insurer may cancel or refuse to renew a kind of insurance when the cancellation or nonrenewal is necessary because of a loss of or substantial reduction in applicable reinsurance, by filing a plan with the Commissioner pursuant to the requirements of this section. The insurer's plan must be filed with the Commissioner at least 15 business days prior to the issuance of any notice of cancellation or nonrenewal. The insurer may implement its plan upon the approval of the Commissioner, which shall be granted or denied in writing, with the reasons for his actions, within 15 business days of the Commissioner's receipt of the plan. Any plan submitted for approval shall contain a certification by an elected officer of the company:

(1) That the loss or substantial change in applicable reinsurance necessitates the cancellation or nonrenewal action;
(2) That the insurer has made a good faith effort to obtain replacement reinsurance but was unable to do so because of the unavailability or unaffordability of replacement reinsurance;
(3) Identifying the category of risks, the total number of risks written by the company in that category, and the number of risks intended to be cancelled or not renewed;
(4) Identifying the total amount of the insurer's net retention for the risks intended to be cancelled or not renewed;
(5) Identifying the total amount of risk ceded to each reinsurer and the portion of that total that is no longer available;
(6) Explaining how the loss of or reduction in reinsurance affects the insurer's risks throughout the kind of insurance proposed for cancellation or nonrenewal;
(7) Explaining why cancellation or nonrenewal is necessary to cure the loss of or reduction in reinsurance; and
(8) Explaining how the cancellations or nonrenewals, if approved, will be implemented and the steps that will be taken to ensure that the cancellation or nonrenewal decisions will not be applied in an arbitrary, capricious, or unfairly discriminatory manner. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§ 58-477. Notice of cessation of business through insurance agency.

(a) Each insurer must, upon the cessation of any of its business through a North Carolina insurance agency, furnish the Commissioner with the following information on a form to be prescribed by the Commissioner:

(1) The kinds of policies no longer written through the agency. In describing the kinds of these policies, those appearing

on page 14 of the annual statement convention blank will suffice, except that liability coverages should be more specifically described;

(2) The number of policies, by kind, no longer written through the agency;

(3) A statement as to whether or not the cessation of business is by nonrenewal of business at policy expiration dates, or is a decision not to accept new business from the agency, or a combination of these;

(4) If the cessation is by the insurer, the specific reason or reasons for the cessation; and

(5) The names and addresses of the insurer and the agency and the effective date of the cessation of the business.

(b) This section applies to the cessation of the writing of any kind of insurance subject to this Article through an agency located in North Carolina. Reports are required even though other kinds of insurance may still be written through the agency. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§ 58-478. No liability for statements or communications made in good faith; prior notice to agents or brokers.

(a) There is no liability on the part of and no cause of action for defamation or invasion of privacy arises against any insurer or its authorized representatives, agents, or employees, or any licensed insurance agent or broker, for any communication or statement made, unless shown to have been made in bad faith with malice, in any of the following:

(1) A written notice of cancellation under G.S. 58-473, of nonrenewal under G.S. 58-474, or of cessation of business through an agency under G.S. 58-477, specifying the reasons therefor;

(2) Communications providing information pertaining to such cancellation, nonrenewal, or cessation of business through an agency;

(3) Evidence submitted at any court proceeding, administrative hearing, or informal inquiry in which such cancellation, nonrenewal, or cessation of business through an agency is an issue.

(b) With respect to the notices that must be given or mailed to agents or brokers under G.S. 58-473 and G.S. 58-474, the insurer may give or mail that notice at the same time or prior to giving or mailing the notice to the insured. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§ 58-479. Termination of writing kind of insurance.

(a) Except as provided in G.S. 58-476, no insurer may terminate, by nonrenewals, an entire book of business of any kind of insurance without 60 days prior written notice to the Commissioner; unless the Commissioner determines that continuation of the line of business would impair the solvency of the insurer or unless the Commissioner determines that such termination is effected under a plan

that minimizes disruption in the marketplace or that makes provisions for alternative coverage at comparable rates and terms.

(b) Except as provided in G.S. 58-476, in-term cancellation by an insurer of an entire book of business of any kind of insurance is presumed to be unfair, inequitable, and contrary to the public interest, unless the Commissioner determines that continuation of the line of business would impair the solvency of the insurer or unless the Commissioner determines that such termination is effected under a plan that minimizes disruption in the marketplace or that makes provisions for alternative coverage at comparable rates and terms. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§ 58-480. Policy form and rate filings; punitive damages; data required to support filings.

(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all policy forms must be filed with and either approved by the Commissioner or 90 days have elapsed and he has not disapproved the form before they may be used in this State. With respect to liability insurance policy forms, an insurer may exclude or limit coverage for punitive damages awarded against its insured.

(b) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all rates by licensed fire and casualty companies or their designated rating organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer.

(c) A filing that does not include the statistical and rating information required by subsections (d) and (e) of this section is not a proper filing, and will be returned to the filing insurer or organization. The filer may then remedy the defects in the filing. An otherwise defective filing thus remedied shall be deemed to be a proper filing, except that all periods of time specified in this Article will run from the date the Commissioner receives additional or amended documents necessary to remedy all material defects in the filing.

(d) The following information must be included in each policy form, rule, and rate filing:

(1) A detailed list of the rates, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, and rates, including the effect of each change.

(e) Each policy form, rule, and rate filing that is based on statistical data must be accompanied by the following properly identified information:

(1) North Carolina earned premiums at the actual and current rate level; losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ratio anticipated at the time the rates were promulgated for the experience period;

(2) Credibility factor development and application;
(3) Loss development factor derivation and application on both paid and incurred bases and in both numbers and dollars of claims;
(4) Trending factor development and application;
(5) Changes in premium base resulting from rating exposure trends;
(6) Limiting factor development and application;
(7) Overhead expense development and application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees;
(8) Percent rate change;
(9) Final proposed rates;
(10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves;
(11) Identification of applicable statistical plans and programs and a certification of compliance with them;
(12) Investment earnings on capital and surplus;
(13) Level of capital and surplus needed to support premium writings without endangering the solvency of the company or companies involved; and
(14) Such other information that may be required by any rule adopted by the Commissioner.

Provided, however, that no filing may be returned or disapproved on the grounds that such information has not been furnished if the filer has not been required to collect such information pursuant to statistical plans or programs or to report such information to statistical agents, except where the Commissioner has given reasonable prior notice to the filer to begin collecting and reporting such information or except when the information is readily available to the filer.

(f) It is unlawful for an insurer to charge or collect, or attempt to charge or collect, any premium for insurance except in accordance with filings made with the Commissioner under this section and Article 13C of this Chapter. (1985 (Reg. Sess., 1986), c. 1027, s. 14; 1987, c. 441, ss. 7, 9, 10.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "With the exception of inland marine insurance that is not written according to manual rates and rating plans" for "With the exception of inland marine insurance, which by general custom of the business is not written according to manual rates and rating plans" at the beginning of subsections (a) and (b), and added the second sentence of subsection (b) and the second and third sentences of subsection (c).

§ 58-481. Penalties; restitution.

In addition to criminal penalties for acts declared unlawful by this Article, any violation of this Article subjects an insurer to revocation or suspension of its certificate of authority, or monetary penalties or payment of restitution as provided in G.S. 58-9.7. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

§§ 58-482 to 58-489: Reserved for future codification purposes.

Article 39.

Local Government Risk Pools.

§ 58-490. Short title; definition.

This Article shall be known and may be cited as the Local Government Risk Pool Act. As used in this Article, "local government" means any county, city, or housing authority located in this State. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 864, s. 30.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 58, makes this Article effective July 16, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, substituted "city, or housing authority" for "or municipal corporation."

§ 58-491. Local government pooling of property, liability and workers' compensation coverages.

In addition to other authority granted pursuant to Chapters 153A and 160A of the General Statutes, two or more local governments may enter into contracts or agreements pursuant to this Article for the joint purchasing of insurance or to pool retention of their risks for property losses and liability claims and to provide for the payment of such losses of or claims made against any member of the pool on a cooperative or contract basis with one another, or may enter into a trust agreement to carry out the provisions of this Article. In addition to other authority granted pursuant to Chapters 153A and 160A of the General Statutes, two or more local governments may enter into contracts or agreements pursuant to this Article to establish a separate workers' compensation pool to provide for the payment of workers' compensation claims pursuant to Chapter 97 of the General Statutes or to establish pools providing for life or accident and health insurance for their employees on a cooperative or contract basis with one another; or may enter into a trust agreement to carry out the provisions of this Article. A workers' compensation pool established pursuant to this Article may only provide coverage for workers' compensation, employers' liability, and occupational disease claims. Such local governments shall give the Commissioner 30 days' advance written notification, in a form prescribed by the Commissioner, that they intend to organize and operate risk pools pursuant to this Article. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, s. 14.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, added the last sentence.

§ 58-492. Board of trustees.

(a) Each pool will be operated by a board of trustees consisting of at least five persons who are elected officials or employees of local governments within this State. The board of trustees of each pool will:

(1) Establish terms and conditions of coverage within the pool, including underwriting criteria and exclusions of coverage;
(2) Ensure that all valid claims are paid promptly;
(3) Take all necessary precautions to safeguard the assets of the pool;
(4) Maintain minutes of its meeting and make those minutes available to the Commissioner;
(5) Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group and delineate in written minutes of its meetings the areas of authority it delegates to the administrator; and
(6) Establish guidelines for membership in the pool.

(b) The board of trustees may not:

(1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner.
(2) Borrow any moneys from the pool or in the name of the pool, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

§ 58-493. Contract.

A contract or agreement made pursuant to this Article must contain provisions:

(1) For a system or program of loss control;
(2) For termination of membership including either:
  a. Cancellation of individual members of the pool by the pool; or
  b. Election by an individual member of the pool to terminate its participation;
(3) Requiring the pool to pay all claims for which each member incurs liability during each member's period of membership, except where a member has individually retained the risk, where the risk is not covered, and except for amount of claims above the coverage provided by the pool.
(4) For the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses;
(5) For a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled, or paid;
(6) That the pool may establish offices where necessary in this State and employ necessary staff to carry out the purposes of the pool;
(7) That the pool may retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and ad-

visors, and other persons as the board of trustees or the administrator deem to be necessary;

(8) That the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers;

(9) That the pool may purchase, lease, or rent real and personal property it deems to be necessary; and

(10) That the pool may enter into financial services agreements with financial institutions and that it may issue checks in its own name. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

§ 58-494. Termination.

A pool or a terminating member must provide at least 90 days' written notice of the termination or cancellation. A workers' compensation pool must notify the Commissioner of the termination or cancellation of a member within 10 days after notice of termination or cancellation is received or issued. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

§ 58-495. Financial monitoring and evaluation of pools.

Each pool must be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool must obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-16, 58-17, 58-18, 58-21, 58-22, 58-25, 58-25.1, 58-27, and 58-63 apply to each pool and to persons that administer pools for local governments. Annual financial statements required by G.S. 58-21 shall be filed by each pool within 60 days after the end of the pool's fiscal year. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, s. 15.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, rewrote the catchline, which formerly read "Audit," and substituted the present third and fourth sentences for former third, fourth and fifth sentences, which read "The Commissioner must examine each pool once every three years. The costs of such examination expenses will be paid by the pool that is subject to the examination. The Commissioner may examine a pool earlier than three years after a previous examination if he has reason to believe that the pool is insolvent or financially impaired."

§ 58-496. Insolvency or impairment of pool.

(a) If, as a result of the annual audit or an examination by the Commissioner, it appears that the assets of a pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the Commissioner must notify the administrator and the board of trustees of the pool of the deficiency and his list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within 30 days after

the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool.

(b) If a pool is determined to be insolvent, financially impaired, or is otherwise found to be unable to discharge its legal liabilities and other obligations, each pool contract will provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's average annual contribution in order to satisfy the amount of deficiency. Members of a pool may, by contract, agree to limit the assessment to the amount of each member's annual contribution to the pool. Such a contractual agreement shall not impair the authority granted the Commissioner by this section. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, ss. 16, 17.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted the present second and third sentences of subsection (a) for a former second sentence, which read "If the pool fails to comply with the recommendations within 60 days after the date of the notice, the Commission must notify the chief executive officers for the governing bodies of the members of the pool, the Governor, the President of the Senate, and the Speaker of the House of Representatives that the pool has failed to comply with the recommendations of the Commissioner."; and substituted the last two sentences of subsection (b) for a former final sentence thereof, which read "The assessment may not exceed the amount of each member's average annual contribution to the pool."

§ 58-497. Immunity of administrators and boards of trustees.

There is no liability on the part of and no cause of action arises against any board of trustees established or administrator appointed pursuant to G.S. 58-492, their representatives, or any pool, its members, or its employees, agents, contractors, or subcontractors for any good faith action taken by them in the performance of their powers and duties in creating or administering any pool under this Article. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

§ 58-498. Pools not covered by guaranty associations or solvency funds.

The provisions of Articles 17B and 17C of this Chapter and of Articles 3 and 4 of Chapter 97 of the General Statutes do not apply to any risks retained by local governments pursuant to this Article. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, s. 18.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "Articles 3 and 4" for "Article 3."

§§ 58-499 to 58-504: Reserved for future codification purposes.

Article 40.

Liability Risk Retention.

§ 58-505. Purpose.

The purpose of this Article is to regulate the formation and operation of risk retention and purchasing groups in this State that are formed pursuant to the provisions of the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986 (15 U.S.C. § 3901 et seq.). (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1013, s. 18, makes this Article effective September 1, 1986.

Session Laws 1987, c. 310 rewrote this Article and its heading, which formerly read "Product Liability Risk Retention Groups."

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section.

§ 58-506. Definitions.

As used in this Article:

(1) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:
   a. Any person who performs that work; or
   b. Any person who hires an independent contractor to perform that work;

   but includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(2) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:
   a. For a corporation, the state in which the purchasing group is incorporated; and
   b. For an unincorporated entity, the state of its principal place of business.

(3) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:
   a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
   b. To pay other obligations in the normal course of business.

(4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this State.

(5) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other per-

sons resulting from or arising out of any profit or nonprofit business, trade, product, professional or other services, premises, or operations; or any activity of any state or local government, or any agency or political subdivision thereof. Liability does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. § 51 et seq.).

(6) "Personal risk liability" means liability for damage because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities. Personal risk liability does not include liability as defined in subdivision (5) of this section.

(7) "Plan of operation" or "feasibility study" means an analysis that presents the expected activities and results of a risk retention group including, at a minimum:

a. The coverages, deductibles, coverage limits, rates, and rating classification systems for each kind of insurance the group intends to offer;

b. Historical and expected loss experience of the proposed members and national experience of similar exposures;

c. Pro forma financial statements and projections;

d. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

e. Identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

f. Such other matters as may be prescribed by the Commissioner for liability insurance companies authorized by this Chapter.

(8) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product; but does not include the liability of any person for those damages if the product involved was in the possession of such person when the incident giving rise to the claim occurred.

(9) "Purchasing group" means any group that:

a. Has as one of its purposes the purchase of liability insurance on a group basis;

b. Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in sub-subdivision c. of this subdivision;

c. Is composed of members whose businesses or activities are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

d. Is domiciled in any state.

(10) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

a. Whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;

b. That is organized for the primary purpose of conducting the activity described under sub-subdivision a. of this subdivision;

c. That

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulator of at least one state that it satisfied the capitalization requirements of such state; except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the Risk Retention Act of 1986;

d. That does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such person;

e. That

(i) Has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members who are provided insurance by the risk retention group; or

(ii) Has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

g. Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group, or any members of such other group, that is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f. of this

subdivision from membership in the risk retention group that provides such reinsurance; and

h. The name of which includes the phrase "Risk Retention Group". (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section.

§ 58-507. Risk retention groups chartered in this State.

A risk retention group seeking to be chartered in this State must be chartered and licensed as a liability insurance company under Article 6 of this Chapter and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-508 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State. Before it may offer insurance in any State, each risk retention group shall also submit to the Commissioner, for his approval, a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1; c. 727, s. 13.)

Effect of Amendments. — Session Laws 1987, c. 310, s. 1, effective June 8, 1987, rewrote this section.

Session Laws 1987, c. 727, s. 13, effective August 5, 1987, in this section as rewritten by Session Laws 1987, c. 310, substituted "under Article 6 of this Chapter" for "authorized by this Chapter" in the first sentence.

§ 58-508. Risk retention groups not chartered in this State.

Risk retention groups that have been chartered in states other than this State and that seek to do business as risk retention groups in this State must observe and abide by the laws of this State as follows:

(1) Notice of Operations and Designation of Commissioner as Agent. — Before offering insurance in this State, a risk retention group shall submit to the Commissioner:

a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information including information on its membership, as the Commissioner may require to verify that the risk retention group is qualified under G.S. 58-506(10);

b. A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance that (i) was defined

in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and (ii) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date;

c. A statement of registration that designates the Commissioner as its agent for the purpose of receiving service of legal process.

(2) Financial Condition. — A risk retention group doing business in this State shall file with the Commissioner:

a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist, under criteria established by the NAIC or by the Commissioner;

b. A copy of each examination of the risk retention group as certified by the State insurance regulator or public official conducting the examination;

c. Upon request by the Commissioner, a copy of any audit performed with respect to the risk retention group; and

d. Such information as may be required to verify its continuing qualification as a risk retention group under G.S. 58-506(10).

(3) Taxation.

a. All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same payment procedures and to the same interest, fines, and penalties for nonpayment as those applicable to surplus lines insurance under Article 36 of this Chapter.

b. To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks that they have placed with or on behalf of a risk retention group not chartered in this State.

c. To the exent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State.

(4) Compliance With Unfair Claims Settlement Practices Law. — A risk retention group and its agents and representatives shall comply with G.S. 58-39(5) and G.S. 58-54.4(11).

(5) Deceptive, False, or Fraudulent Practices. — A risk retention group shall comply with the provisions of Article 3A of this Chapter and Chapter 75 of the General Statutes regarding deceptive, false, or fraudulent acts or practices.

(6) Examination Regarding Financial Condition. — A risk retention group must submit to an examination by the Commissioner to determine its financial condition if the insurance regulator of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by

the Commissioner. This examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the NAIC.

(7) Notice to Purchasers. — Any policy issued by a risk retention group shall contain in 10 point type and contrasting color on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. In the event of the insolvency of your risk retention group, losses under this policy will not be paid by any insurance insolvency or guaranty fund in this State."

(8) Prohibited Acts Regarding Solicitation or Sale. — The following acts by a risk retention group are prohibited:

a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) Prohibition of Ownership By An Insurance Company. — No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) Prohibited Coverage. — No risk retention group may offer insurance policy coverage prohibited or not authorized by this Chapter or declared unlawful by the appellate courts of this State.

(11) Delinquency Proceedings. — A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under G.S. 58-508. (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1; c. 727, ss. 1, 12.)

Effect of Amendments. — Session Laws 1987, c. 310, s. 1, effective June 8, 1987, rewrote this section.

Session Laws 1987, c. 727, ss. 1 and 12, effective August 5, 1987, in this section as rewritten by Session Laws 1987, c. 310, added subdivision (3), and rewrote the notice in subdivision (7).

§ 58-509. Compulsory association.

(a) No risk retention group is required to join or contribute financially to any insurance insolvency or guaranty fund or similar mechanism in this State; nor shall any risk retention group or its insureds receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

(b) A risk retention group may be required to participate in residual market mechanisms under Articles 25A and 37 of this Chapter. (1987, c. 310, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 19, effective February 1, 1988, substituted "Article 3" for "Article 45" near the end of subsections (a) and (b) of this section as it read prior to being rewritten by Session Laws 1987, c. 310, s. 1. Reference to Article 45 no longer occurs in this section. The section is set out above as rewritten by c. 310, s. 1.

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, which formerly related to agents.

§ 58-510. Countersignature not required.

A policy of insurance issued to a risk retention group or any member of that group is not required to be countersigned as otherwise provided in this Chapter. (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, which formerly related to other service providers. Former § 58-514 was similar to this section.

§ 58-511. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.

(a) Any purchasing group meeting the criteria established under the provisions of 15 U.S.C. § 3901 et seq. is exempt from any law of this State relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that discriminates against a purchasing group or its members. In addition, an insurer is exempt from any law of this State that prohibits providing, or offering to provide, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws of this State.

(b) Taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

(1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes on similar coverage from a similar insurance source by other insureds; and

(2) Paid first by such insurance source, and if not by such source then by the agent or broker for the purchasing group, and if not by such agent or broker then by the pur-

chasing group, and if not by such group then by each of its members. (1987, c. 310, s. 1; c. 727, s. 9.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 928, s. 14 makes this section effective September 1, 1986.

Effect of Amendments. — Session Laws 1987, c. 310, s. 1, effective June 8, 1987, rewrote this section, which formerly related to taxes.

Session Laws 1987, c. 727, s. 9, effective August 5, 1987, in this section as rewritten by Session Laws 1987, c. 310, designated the first paragraph as subsection (a) and added subsection (b).

§ 58-512. Notice and registration requirements of purchasing groups.

(a) A purchasing group that intends to do business in this State shall furnish notice to the Commissioner that shall:

(1) Identify the state in which the group is domiciled;

(2) Specify the lines and classifications of liability insurance that the purchasing group intends to purchase;

(3) Identify the insurer from which the group intends to purchase its insurance and the domicile of such insurer;

(4) Identify the principal place of business of the group;

(5) Provide such other information as may be required by the Commissioner to verify that the purchasing group is qualified under G.S. 58-506(9); and

(6) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this State; and furnish such information as may be required by the Commissioner to determine the appropriate premium tax treatment.

(b) The purchasing group shall register with and designate the Commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement does not apply in the case of a purchasing group:

(1) That

a. Was domiciled before April 2, 1986, in any state of the United States; and

b. Is domiciled on and after October 27, 1986, in any state of the United States;

(2) That before October 27, 1986, purchased insurance from an insurer licensed in any state; and since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(3) That was a purchasing group under the requirements of the Product Liability Retention Act of 1981 before October 27, 1986; and

(4) That does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986. (1987, c. 310, s. 1; c. 727, s. 10.)

Effect of Amendments. — Session Laws 1987, c. 310, s. 1, effective June 8, 1987, rewrote this section, which formerly related to restrictions.

Session Laws 1987, c. 727, s. 10, effective August 5, 1987, in this section as rewritten by Session Laws 1987, c. 310, deleted "and" at the end of subdivision (a)(4), added "and" at the end of subdivision (a)(5), and added subdivision (a)(6).

§ 58-513. Restriction on insurance purchased by purchasing groups.

(a) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state nor from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

(b) A purchasing group that obtains liability insurance from a nonadmitted insurer or from a risk retention group shall provide each member of the purchasing group that has a risk resident or located in this State with the notice specified in G.S. 58-429(f) or G.S. 58-508(7), whichever is applicable.

(c) No purchasing group may purchase insurance that provides for a deductible or for a self-insured retention applicable to the group as a whole; provided, however, that coverage may provide for a deductible or for self-insured retention applicable to members of the group. (1987, c. 310, s. 1; c. 727, s. 11.)

Effect of Amendments. — Session Laws 1987, c. 310, s. 1, effective June 8, 1987, rewrote this section, which formerly related to exemption from compulsory associations.

Session Laws 1987, c. 727, s. 11, effective August 5, 1987, in this section as rewritten by Session Laws 1987, c. 310, designated the first paragraph as subsection (a) and added subsections (b) and (c).

§ 58-514. Administrative and procedural authority regarding risk retention groups and purchasing groups.

The Commissioner is authorized to make use of any of the powers established under this Chapter to enforce the laws of this State as long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Act of 1986. This includes, but is not limited to, the Commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and seek or impose penalties. With regard to any investigation, administrative proceeding, or litigation, the Commissioner can rely on the procedural law and regulations of the State. The injunctive authority of the Commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. (1987, c. 310, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, which formerly related to a counter signature not being required. For provisions similar to former § 58-514, see now § 58-510.

§ 58-515. Penalties.

A risk retention group that violates any provision of this Article is subject to G.S. 58-9.7. (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, which formerly related to unfair claims settlement practices. Former § 58-518 was a penalty provision.

§ 58-516. Duty of agents or brokers to obtain license.

Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, that solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State shall, before commencing any such activity, obtain a license from the Commissioner. (1987, c. 310, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, which formerly related to an examination for financial impairment.

§ 58-517. Binding effect of orders issued in U.S. District Court.

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state, or in all states or in any territory or possession of the United States, upon a finding that such a group is in a hazardous financial condition, is enforceable in the courts of this State. (1987, c. 310, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section, which formerly related to delinquency proceedings.

§ 58-518: Repealed by Session Laws 1987, c. 310, s. 1, effective June 8, 1987.

Editor's Note. — Former 58-518, as enacted by Session Laws 1985 (Reg. Sess., 1986) c. 1013, s. 8, was a penalty provision. For penalty provision, see now § 58-515.

§§ 58-519 to 58-524: Reserved for future codification purposes.

Article 41.

Third Party Administrators.

§ 58-525. Definitions.

As used in this Article, unless the context clearly indicates otherwise:

(1) "Administrator" means any person who:
   a. Collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with the kinds of insurance specified in G.S. 58-72(1) through 58-72(3); or
   b. For another person and for a fee or other valuable consideration, provides claims or administrative services through a service contract with any person that provides a benefit plan to its employees or members.

(2) "Benefit plan" means a wholly or partially self-funded benefit plan or a fully insured benefit plan that by means of direct payment, reimbursement, or other arrangement, provides partial or complete coverage for health care services, including but not limited to medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or vision care, or for drugs or other items reasonably related thereto.

(3) "Participant" means an individual who is covered under a benefit plan.

(4) "Self-funder" means a person that assumes responsibility for payments under a benefit plan rather than transferring that responsibility to some other person.

(5) "Service contract" means a written agreement between an administrator and an insurer or self-funder for the provision of services by an administrator pursuant to this Article. (1987, c. 676, s. 1.)

Editor's Note. — Session Laws 1987, c. 676, s. 2 makes this Article effective September 1, 1987.

§ 58-526. Exceptions.

Nothing in this Article applies to:

(1) An employer or any employee thereof who conducts the activities specified in G.S. 58-525(1) on behalf of the employees of the employer or the employees of one or more subsidiary or affiliated corporations of such employer;

(2) An insurer that is licensed under this Chapter or General Statute Chapters 57 or 57B or that is acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was licensed to write insurance;

(3) An agent or broker licensed by the Commissioner for any or all of the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3) whose activities are limited exclusively to the sale of such kind or kinds of insurance;

(4) A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
(5) A trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. 186;
(6) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees, and employees acting thereunder, or a custodian, its agents and employees acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code;
(7) A bank, credit union, or other financial institution to the extent that such activities are subject to supervision or examination by federal or State banking authorities;
(8) A credit card issuing company that, consistent with State law, advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or
(9) A person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law, and who does not collect charges or premiums in connection with the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3). (1987, c. 676, s. 1.)

§ 58-527. Service contract necessary.

(a) No person shall act as an administrator without a service contract; and such service contract shall be retained as part of the official records of both the insurer or the self-funder and the administrator for the duration of the service contract and for five years thereafter. Such service contract shall contain provisions that include the requirements of G.S. 58-529 through G.S. 58-534, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) Where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy and for five years thereafter. (1987, c. 676, s. 1.)

§ 58-528. Payment to administrator.

Whenever an insurer utilizes the services of an administrator under the terms of a service contract, the payment to the administrator of any premiums or charges for insurance by or on behalf of a participant shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed to be payment to a participant until such payments are received by the participant. Nothing in this Article limits any right against the administrator resulting from its failure to make payments to the insurer or participants. (1987, c. 676, s. 1.)

§ 58-529. Maintenance of information.

Every administrator shall maintain at its principal administrative office for the duration of the service contract and for five years thereafter adequate books and records of all transactions between the administrator, insurers or self-funders, and participants. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping. The Commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained in such books and records, including but not limited to the identity and addresses of participants, shall be confidential; except the Commissioner may use such information in any proceeding instituted against the administrator. The insurer or self-funder shall retain the right to continuing access to such books and records sufficient to permit the insurer or self-funder to fulfill all of its contractual obligations to participants, subject to any restrictions in the service contract between the insurer or self-funder and administrator on the proprietary rights of the parties in such books and records. (1987, c. 676, s. 1.)

§ 58-530. Approval of advertising.

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by such insurer in advance of its use. (1987, c. 676, s. 1.)

§ 58-531. Underwriting provision.

The service contract shall make provision with respect to the underwriting standards or other standards pertaining to the business underwritten by such insurer. (1987, c. 676, s. 1.)

§ 58-532. Collection of premiums and charges.

All insurance charges or premiums collected by an administrator on behalf of or for an insurer or self-funder, and return premiums received from such insurer or self-funder, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled thereto or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer or self-funder, the administrator shall establish separate account; or shall cause the bank in which such fiduciary account is maintained to keep records clearly recording the deposits to and withdrawals from such account made on behalf of each insurer or self-funder. The administrator shall promptly obtain and keep copies of all such records and, upon the request of an insurer or self-funder, shall furnish such insurer or self-funder with copies of such records pertaining to deposits and withdrawals made on behalf of such insurer or self-funder. The administrator shall not pay any claim by making withdrawals from such fiduciary account. Withdrawals from such account shall be made, as provided in the written agreement between the administrator and the insurer or self-funder, for:

(1) Remittance to an insurer or self-funder entitled thereto;

(2) Deposits to another account maintained in the name of such insurer or self-funder;
(3) Transfer to and deposit in a claims paying account, with claims to be paid as provided in G.S. 58-533;
(4) Payment to a group policyholder for remittance to the insurer entitled thereto;
(5) Payment to the administrator of its commission, fees, or charges; or
(6) Remittance of return premiums to any person entitled thereto. (1987, c. 676, s. 1.)

§ 58-533. Payment of claims.

All claims paid by the administrator from funds collected on behalf of an insurer or self-funder shall be paid only on drafts of and as authorized by such insurer or self-funder. (1987, c. 676, s. 1.)

§ 58-534. Claim adjustment or settlement.

With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to such policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums, capitation, or number of claims paid or processed. (1987, c. 676, s. 1.)

§ 58-535. Notification required.

Whenever the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer or self-funder to participants that advises them of the identities of and relationships among the administrator, the participant, and the insurer or self-funder. Whenever an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage. (1987, c. 676, s. 1.)

§ 58-536. Certificate of registration required.

(a) No person shall act as or hold himself out to be an administrator in this State, other than an adjuster licensed in this State for the kinds of insurance for which he is acting as an administrator, unless he holds a certificate of registration as an administrator issued by the Commissioner. Such certificate shall be for a term of one year and shall be renewable. Failure to hold such certificate shall subject the administrator to the provisions of G.S. 58-9.7. The certificate shall be issued by the Commissioner to an administrator unless the Commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation; has violated any insurance statute or administrative rule; or has had a previous application for an insurance license denied for cause within the preceding five years.
(b) Each application for the issuance or renewal of a certificate shall be accompanied by a filing fee of twenty dollars ($20.00) and

evidence of maintenance of a fidelity bond of not less than one hundred thousand dollars ($100,000). (1987, c. 676, s. 1; c. 864, s. 21.)

Effect of Amendments. — Session Laws 1987, c. 864, s. 21, effective August 14, 1987, substituted "for which he is acting as an administrator" for "specified in G.S. 58-72(1) through G.S. 58-72(3)" in the first sentence of subsection (a).

§ 58-537. Committee on Third Party Administrators.

The Commissioner is authorized to appoint a Committee on Third Party Administrators in conformance with the provisions of G.S. 58-7.4. (1987, c. 676, s. 1.)

§§ 58-538, 58-539: Reserved for future codification purposes.

Article 42.

Long-Term Care Insurance.

§ 58-540. Short title.

This Article may be cited as the "Long-Term Care Insurance Act". (1987, c. 331, s. 1.)

Editor's Note. — Session Laws 1987, c. 331, s. 2 makes this Article effective September 1, 1987.

§ 58-541. Purposes.

The purposes of this Article are to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage. (1987, c. 331, s. 1.)

§ 58-542. Scope.

This Article applies to new and renewed long-term care insurance policies delivered or issued for delivery in this State on or after September 1, 1987. This Article is not intended to supersede the obligations of any person subject to its provisions to comply with other applicable laws and rules if such laws and rules do not conflict with this Article. The laws and rules established to govern the medicare supplement insurance policies shall not apply to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or nursing home insurance is not subject to this Article. (1987, c. 331, s. 1.)

§ 58-543. Definitions.

As used in this Article:

(1) "Applicant" means:

a. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

b. In the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

(3) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this State and issued to:

a. One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or both, for employees or former employees or both, or for members or former members or both, of the employers or labor organizations; or

b. Any professional, trade, or occupational association for its members or former or retired members, or all, if such association:

(i) Comprises individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) Has been maintained in good faith for purposes other than obtaining insurance; or

c. An association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering such policy within this State, the association or associations, or the insurer of the association or associations, shall file evidence with the Commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. Ninety days after such filing the association or associations will be deemed to have satisfied such organizational requirements, unless the Commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

d. A group other than as described in subdivisions (3)a., (3)b., and (3)c. of this section, subject to a finding by the Commissioner that:

(i) The issuance of the group policy is not contrary to the best interest of the public;
(ii) The issuance of the group policy would result in economies of acquisition or administration; and
(iii) The benefits are reasonable in relation to the premiums charged.

(4) "Long-term care insurance" means any policy or certificate advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual policies whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. "Long-term care insurance" does not include any policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(5) "Policy" means any policy, contract, certificate, subscriber agreement, rider, or endorsement delivered or issued for delivery in this State by an insurer, fraternal benefit society, nonprofit health, hospital or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization. (1987, c. 331, s. 1; c. 864, s. 68.)

Effect of Amendments. — Session Laws 1987, c. 864, s. 68, effective September 1, 1987, substituted "Ninety" for "Thirty" at the beginning of the last sentence of paragraph (3)c.

§ 58-544. Limits of group long-term care insurance.

No group long-term care insurance coverage may be offered to a resident of this State under a group policy issued in another state to a group described in G.S. 58-543(3)(d), unless the Commissioner or the insurance regulator of the other state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State has made a determination that such requirements have been met. (1987, c. 331, s. 1.)

§ 58-545. Disclosure and performance standards for long-term care insurance.

(a) The Commissioner may adopt rules that includes standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

(b) No long-term care insurance policy may:

(1) Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(c) Pre-existing condition:

(1) No long-term care insurance policy or certificate shall use a definition of "pre-existing condition" that is more restrictive than the following: pre-existing condition means the existence of symptoms that would cause an ordinarily prudent person to seek diagnosis, care or treatment, or a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within the following limitation periods:

a. Six months preceding the effective date of coverage of an insured person who is 65 years of age or older on the effective date of coverage; or

b. Twenty-four months preceding the effective date of coverage of an insured person who is under age 65 on the effective date of coverage.

(2) No long-term care insurance policy may exclude coverage for a loss or confinement that is the result of a pre-existing condition unless such loss or confinement begins with the following periods:

a. Six months following the effective date of coverage of an insured person who is 65 years of age or older on the effective date of coverage; or

b. Twenty-four months following the effective date of coverage of an insured person who is under 65 on the effective date of coverage.

(3) The Commissioner may extend the limitation periods set forth in subdivisions (c)(1) and (2) of this section as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(4) The definition of "pre-existing condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from under-

writing in accordance with that insurer's established underwriting standards.

(d) No long-term care insurance policy that provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than 30 days after discharge from the institution.

(e) The Commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies, provided that a specific reference to long-term care insurance policies is contained in the rules.

(f) An individual long-term care insurance policyholder has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that unless the policyholder has received benefits under the policy, the policyholder has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(g) A person insured under a long-term care insurance policy issued pursuant to a direct response has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that unless the insured person has received benefits under the policy, the insured person shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(h) An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request; but regardless of request shall make such delivery no later than at the time of policy delivery. Such outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(3) A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and

(4) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

(i) A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this State, shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

(j) No policy or certificate may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with the provisions of this Article. (1987, c. 331, s. 1.)

§ 58-546. Facilities, services, and conditions defined.

(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

(1) "Adult day care program" shall be defined in accordance with the provisions of G.S. 131D-6(b).

(2) "Chore" services include the performance of tasks incidental to activities of daily living that do not require the services of a trained homemaker or other specialist. Such services are provided to enable individuals to remain in their own homes and may include such services as: assistance in meeting basic care needs such as meal preparation; shopping for food and other necessities; running necessary errands; providing transportation to essential service facilities; care and cleaning of the house, grounds, clothing, and linens.

(3) "Combination home" shall be defined in accordance with the terms of G.S. 131E-101(1).

(4) "Domiciliary home" shall be defined in accordance with the terms of G.S. 131D-2(a)(3).

(5) "Family care home" shall be defined in accordance with the terms of G.S. 131D-2(a)(5).

(6) "Group home for developmentally disabled adults" shall be defined in accordance with the terms of G.S. 131D-2(a)(6).

(7) "Home for the aged and disabled" shall be defined in accordance with the terms of G.S. 131D-2(a)(7).

(8) "Home health services" shall be defined in accordance with the terms of G.S. 131E-136(3).

(9) "Homemaker services" means supportive services provided by qualified para-professionals who are trained, equipped, assigned, and supervised by professionals within the agency to help maintain, strengthen, and safeguard the care of the elderly in their own homes. These standards must, at a minimum, meet standards established by the North Carolina Division of Social Services and may include: Providing assistance in management of household budgets; planning nutritious meals; purchasing and preparing foods; housekeeping duties; consumer education; and basic personal and health care.

(10) "Hospice" shall be defined in accordance with the terms of G.S. 131E-176(13a).

(11) "Intermediate care facility" shall be defined in accordance with the terms of G.S. 131E-176(14).

(12) "Nursing home" shall be defined in accordance with the terms of G.S. 131E-101(6).

(13) "Respite care, institutional" means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time. The insured receives care for the respite period in an institutional setting, such as a nursing home, family care home, rest home, or other appropriate setting.

(14) "Respite care, non-institutional" means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time in the home of the insured or other appropriate community location.

(15) "Skilled Nursing Facility" shall be defined in accordance with the terms of G.S. 131E-176(23).

(b) Whenever long-term care insurance provides coverage for organic brain disorder syndrome, progressive dementing illness, or primary degenerative dementia, such phrases shall be interpreted to include Alzheimer's Disease. Clinical diagnosis of "organic brain disorder syndrome", "progressive dementing illness", and "primary degenerative dementia" must be accepted as evidence that such conditions exist in an insured when a pathological diagnosis cannot be made; provided that such medical evidence substantially documents the diagnosis of the condition and the insured received treatment for such condition. (1987, c. 331, s. 1.)

§§ 58-547 to 58-574: Reserved for future codification purposes.

Article 43.

Reserved.

Article 44.

Managing General Agents.

§ 58-575. Agency contracts.

(a) Any domestic insurer that contracts with any person whereby such person is granted the right or privilege to solicit, procure, write, or produce a major part of the insurance business for such insurer and collect premiums therefor shall file such contract with the Commissioner within 15 days from the execution of such contract or within 60 days following the end of any calendar quarter in which such person produces a major portion of the insurer's insurance business. For the purposes of this section, any person who produces in excess of five percent (5%) of an insurer's insurance premium volume during any one calendar quarter shall be deemed as having been granted the privilege of producing a major portion of such insurer's business. Failure of the Commissioner to disapprove any such contract within 30 days after the same shall be filed with him, shall constitute his approval thereof. An insurer may continue to accept business from such person until such contract is disapproved by the Commissioner. Such disapproval shall be in writing, stating the reasons therefor, and a copy thereof shall be delivered to the company.

(b) The Commissioner shall not approve any such contract that:
(1) Subjects the insurer to excessive charges for expenses or commission;
(2) Vests in the agent or agency company any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;
(3) Gives to such person, the right to solicit, procure, write, or produce a major part of the insurance business for such insurer and collect and hold the premiums for such unreasonable period as may jeopardize the security of policyholders; or
(4) Fails to require such person to make available to the Commissioner or his designees all books, records, and documents pertaining to such person's insurance business.

(c) The Commissioner shall not approve any contract with any person if such person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relationships with any person or persons known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(d) The Commissioner, for the purpose of ascertaining the assets, conditions and affairs of any person having a contract as provided in subsection (a) of this section, may examine the books, records, documents, and assets of such person.

(e) The Commissioner may, after a hearing held pursuant to G.S. 58-9.2, withdraw his approval of any agency contract theretofore approved by him, if he finds that the basis of his original approval no longer exists, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsections (a) and (b) of this subsection [section].

(f) As used in this section, "person" includes different legal entities that are direct or indirectly owned or controlled by the same person. (1987, c. 752, s. 8.)

Editor's Note. — Session Laws 1987, c. 752, s. 21 makes this Article effective upon ratification. The act was ratified August 7, 1987.

It appears that "section" was the intended reference at the end of subsection (e), rather than "subsection."

§ 58-576. Retrospective compensation agreements.

(a) Retrospective compensation agreements for business written under this Chapter must be filed with the Commissioner for his approval.

(b) "Retrospective compensation agreement" means any such arrangement, agreement, or contract having as its purpose the actual or constructive retention by the insurer of a fixed proportion of the gross premiums, with the balance of the premiums, retained actually or constructively by the agent or the producer of the business, who assumes to pay therefrom all losses, all subordinate commissions, loss adjustment expenses and his profit, if any, with other provisions of such arrangement, agreement, or contract auxiliary or incidental to such purpose.

(c) The standards for approval shall be as set forth under G.S. 58-575. (1987, c. 752, s. 8.)

§ 58-577. Management contracts.

(a) All agreements or contracts under which any person is delegated management duties or control of an insurer, or which transfer a substantial part of any major function of an insurer such as adjustment of losses, production of business, investment of assets, or general servicing of the insurer's business must be filed with the Commissioner on or before the effective date of such contract or agreement.

(b) There shall be exempted from the filing requirement of this section contracts by groups of affiliated insurers on a pooled funds basis or service company management basis, where costs to the individual member insurers are charged on an actually incurred or closely estimated basis. However, these contracts must be reduced to written form.

G.S. 58-576, 58-577, and 58-578 do not apply to any power of attorney or other authority authorized by G.S. 58-138. (1987, c. 752, s. 8.)

§ 58-578. Grounds for disapproval.

(a) The Commissioner must disapprove any such management contract or service agreement if, at any time, he finds:

(1) That the service or management charges are based upon criteria unrelated either to the managed insurer's profits or to the reasonable customary and usual charges for such services or are based on factors unrelated to the value of such services to the insurer; or

(2) That management personnel or other employees of the insurer are to be performing management functions and receiving any remuneration therefor through the management or service contract in addition to the compensation by way of salary received directly from the insurer for their services; or

(3) That the contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurance company management; or

(4) That the contract contains provisions that would be clearly detrimental to the best interest of policyholders, stockholders, or members of the insurer; or

(5) That the officers and directors of the management firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(b) If the Commissioner disapproves of any management contract or service agreement, notice of such action shall be given to the insurer assigning the reasons therefor in writing. The Commissioner shall grant any party to the contract a hearing upon request according to G.S. 58-9.2. (1987, c. 572, s. 8.)

§ 58-579. Supplement to financial statement.

Any insurer that has a management contract shall file with its financial statement a supplement on forms prescribed by the Commissioner which discloses the following: Salaries, commissions, or any valuable consideration paid to each officer and director of the management company or to any shareholder who owns, directly or indirectly, ten percent (10%) of the shares of either the managed insurer or the management company. Any changes in the officers or directors of the managing company are to be reported to the Commissioner. (1987, c. 752, s. 8.)

§§ 58-580 to 58-609: Reserved for future codification purposes.

Article 45.

Licensing of Agents, Brokers, Limited Representatives, and Adjusters.

(This Article is effective February 1, 1988, except § 58-614(d) is effective October 1, 1987)

§ 58-610. (Effective February 1, 1988) Scope.

This Article governs the qualifications and procedures for the licensing of agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers. This Article applies to any and all kinds of insurance and insurers under Chapters 57, 57B, and this Chapter of the General Statutes. Except as provided in G.S. 58-634, this Article does not apply to the licensing of surplus lines licensees under Article 36 of this Chapter. For purposes of this Article, all references to insurance include annuities, unless the context otherwise requires. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-611. (Effective February 1, 1988) Definitions.

As used in this Article, the following definitions apply:

(a) "Agent" means a person licensed to solicit applications for, or to negotiate a policy of, insurance. A person not duly licensed who solicits or negotiates a policy of insurance on behalf of an insurer is an agent within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which an agent of such company is subject, and such company by compensating such person through any of its officers, agents or employees for soliciting policies of insurance shall thereby accept and acknowledge such person as its agent in such transaction.

(b) "Adjuster" means any individual who, for salary, fee, commission, or other compensation of any nature, investigates

or reports to his principal relative to claims arising under insurance contracts other than life or annuity. An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession or an adjuster of marine losses is not deemed to be an adjuster for purposes of this Article. An individual may not simultaneously hold an agent's and an adjuster's license in this State.

(c) "Broker" means a person who, being a licensed agent, procures insurance for a party other than himself through a duly authorized agent of an insurer that is licensed to do business in this State but for which the broker is not authorized to act as agent. A person not duly licensed who procures insurance for a party other than himself is a broker within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which such licensed brokers are subject.

(d) "Limited representative" means a person who is authorized by the Commissioner to solicit or negotiate contracts for the particular kinds of insurance identified in G.S. 58-614(d) and which kinds of insurance are restricted in the scope of coverage afforded.

(e) "Motor vehicle damage appraiser" means an individual who, for salary, fee, commission, or other compensation of any nature, regularly investigates or advises relative to the nature and amount of damage to motor vehicles located in this State or the amount of money deemed necessary to effect repairs thereto and who is not:

(1) An adjuster licensed to adjust insurance claims in this State;

(2) An agent for an insurance company who is not required by law to be licensed as an adjuster;

(3) An attorney at law who is not required by law to be licensed as an adjuster; or

(4) An individual who, incident to his regular employment in the business of repairing defective or damaged motor vehicles, investigates and advises relative to the nature and amount of motor vehicle damage or the amount of money deemed necessary to effect repairs thereto. (1987, c. 629, s. 1; c. 864, ss. 76, 77.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — Session Laws 1987, c. 864, s. 77, effective February 1, 1988, deleted "as an independent contractor or an employee of an independent contractor," following "or other compensation of any nature" in subsection (e).

§ 58-612. (Effective February 1, 1988) Restricted license for overseas military agents.

Notwithstanding any other provision of this Article, an individual may be licensed by the Commissioner as a foreign military sales agent to represent a life insurance company domiciled in this State, provided the agent represents the insurance company only in a foreign country or territory and either on a United States military installation or with United States military personnel. The Commis-

sioner may, upon request of the insurance company on application forms furnished by the Commissioner and upon payment of the fee specified in G.S. 58-634, issue to the applicant a restricted license which will be valid only for the representation of the insurance company in a foreign country or territory and either on a United States military installation or with United States military personnel. The insurance company shall certify to the Commissioner that the applicant has the necessary training to hold himself out as a life insurance agent, and that the insurance company is willing to be bound by the acts of the applicant within the scope of his employment. A restricted license issued under this section shall be renewed annually as provided in G.S. 58-614(m). (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-613. (Effective February 1, 1988) Representation.

(a) Every agent or limited representative who solicits or negotiates an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer, is regarded as representing the insurer and not the insured or his beneficiary. This provision does not affect the apparent authority of an agent.

(b) Every broker who solicits an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, is regarded as representing the insured or his beneficiary and not the insurer; except any insurer that directly or through its agents delivers in this State to any insurance broker a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself, is deemed to have authorized such broker to receive on its behalf payment of any premium that is due on such policy of insurance at the time of its issuance or delivery. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-614. (Effective February 1, 1988, except subsection (d) is effective October 1, 1987) General license requirements.

(a) No person shall act as or hold himself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed.

(b) No agent, broker, or limited representative shall make application for, procure, negotiate for or place for others, any policies for any kinds of insurance as to which he is not then qualified and duly licensed.

(c) An agent or broker may be licensed for the following kinds of insurance:

(1) Life, Accident and Health Insurance

(2) Accident and Health Insurance
(3) Fire and Casualty Insurance
(4) Hospital Service
(5) Title Insurance
(6) Dental Service
(7) Automobile Physical Damage

Any person who holds a valid license on February 1, 1988, which grants authority to act as an agent for the kinds of insurance described in this subsection shall be issued the equivalent agents' license for such kinds of insurance.

(d) A fire and casualty insurance license shall not authorize an agent or broker to sell accident and health insurance. An agent or broker must hold a life, accident and health insurance license or an accident and health insurance license to sell accident and health insurance.

(e) A limited representative may receive qualification for one or more licenses without examination for the following kinds of insurance:

(1) Variable Contracts
(2) Ocean Marine
(3) Credit Life, Accident and Health
(4) Credit
(5) Travel Accident and Baggage
(6) Motor Club

(f) No licensed agent, broker or limited representative shall solicit anywhere in the boundaries of this State, or receive or transmit an application or premium of insurance, for a company not authorized to do business in the State, except as provided in G.S. 58-54.21 and Article 36 of this Chapter.

(g) No agent shall place a policy of insurance with any insurer unless he has a current appointment as agent for the insurer in accordance with G.S. 58-617 or has a valid temporary license issued in accordance with G.S. 58-622.

(h) A partnership or corporation that negotiates or solicits insurance may be licensed as an agent, broker, or limited representative provided that it maintains a place of business in this State. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this State in soliciting or negotiating policies of insurance shall be registered with the Commissioner and each such member, officer, director, stockholder or employee shall also qualify as an individual licensee. The partnership or corporate licensee shall within 30 days notify the Commissioner of any addition to or deletion from the list of registered individuals.

(i) The Commissioner shall not grant, renew, or continue any license if he finds that the license is being or will be used by the licensee or applicant for the purpose of writing controlled business. Controlled business means:

(1) Insurance written on the interests of the licensee or of his immediate family or of his employer; or
(2) Insurance covering himself; members of his immediate family; a corporation or partnership of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, or employee; or the officers, directors, substantial stockholders, partners or employees of such a corporation or partnership; provided, however, that

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nothing in this subsection applies to insurance written in connection with credit transactions.

(3) Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if the Commissioner finds that during any 12-month period the aggregate commissions earned from such controlled business have exceeded fifty percent (50%) of the aggregate commissions earned on all business written by such applicant or licensee during the same period.

(j) No insurer, agent, broker, or limited representative shall pay, directly or indirectly, any commission, brokerage or other valuable consideration to any person for services as an agent, broker, or limited representative within this State, unless such person at the time such services were performed held a valid license for that kind of insurance and appropriate company appointments as required by this Article for such services.

(k) Only agents who are duly licensed with appropriate company appointments, licensed brokers, or licensed limited representatives may accept, direct or indirectly, any commission, brokerage, or other valuable consideration: Provided, however, any individual duly appointed and licensed under this Article may pay his commissions or assign his commissions, or direct that his commissions be paid, to a partnership of which he is a member, employee, or agent, or to a corporation of which he is an officer, employee, or agent; provided further that this section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

(l) The license shall state the name and Social Security or other identifying number of the licensee, date of issue, kind or kinds of insurance covered by the license, and such other information as the Commissioner deems to be proper.

(m) A license issued to an agent authorizes him to act until his license is otherwise suspended or revoked. Upon the suspension or revocation of a license, the licensee or any person having possession of such license shall return it to the Commissioner. An agent's license automatically terminates after a period of one year during which no appointment of such agent was in effect.

(n) A license of a broker, limited representative, adjuster, or motor vehicle damage appraiser shall be renewed on April 1st of each year and renewal fees shall be paid. The Commissioner is not required to print licenses for the purpose of renewing licenses. The Commissioner is authorized to establish for such licenses "staggered" license renewal dates that will apportion renewals throughout each calendar year. If such a system of staggered licensing is adopted, the Commissioner is authorized to extend the licensure period for some licensees. License renewal fees prescribed by G.S. 58-634 shall be prorated to the extent they are commensurate with such extensions.

(o) No license as an agent, broker, or limited representative is required of the following:

(1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.

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(2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(4) Agency office employees acting within the confines of the agent's office, under the direction and personal supervision of the duly licensed agent and within the scope of such agent's license, in the acceptance of requests for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

(5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-72(1) through G.S. 58-72(3) that do business without the involvement of a licensed agent. (1987, c. 629, s. 1; c. 864, ss. 78, 79, 87.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of this section is made effective October 1, 1987.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, inserted "G.S. 58-54.21 and" in subsection (f), inserted "or has a valid temporary license issued in accordance with G.S. 58-622" in subsection (g), and inserted "personal" in subdivision (o)(4).

§ 58-615. (Effective February 1, 1988) License requirements.

The Commissioner shall not issue or continue any license of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser except as follows:

(a) Application. — Application shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner.

(b) Age. — Every individual applicant for license under this Article must be 18 years or more of age.

(c) Character. — An applicant for any license under this Article must be deemed by the Commissioner to be competent, trustworthy and financially responsible, and must have not willfully violated the insurance laws of this or any other state.

(d) Education and Training. —

(1) Each applicant must have had special education, training, or experience of sufficient duration and extent reasonably to satisfy the Commissioner that the applicant possesses the competence necessary to fulfill the

responsibilities of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser.

(2) All individual applicants for licensing as life, accident and health agents or as fire and casualty agents shall furnish evidence satisfactory to the Commissioner of successful completion of at least 40 hours of instruction, which shall in all cases include the general principles of insurance and any other topics that the Commissioner establishes by regulation; and which shall, in the case of life, accident and health insurance applicants, include the principles of life insurance and, in the case of fire and casualty insurance applicants, shall include instruction in fire and casualty insurance. Any applicant who submits satisfactory evidence of having successfully completed an agent training course that has been approved by the Commissioner and that is offered by or under the auspices of a fire and casualty or life insurance company admitted to do business in this State or a professional insurance association shall be deemed to have satisfied the educational requirements of this subdivision. The requirement in this subdivision for completion of 40 hours of instruction applies only to applicants for life, accident and health or fire and casualty insurance licenses.

(e) Examination.

(1) After completion and filing of the application with the Commissioner, except as provided in G.S. 58-616, the Commissioner shall require each applicant for license as an agent or an adjuster to take a written examination as to his competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner.

(2) The Commissioner may require any licensed agent, adjuster, or motor vehicle damage appraiser to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been found guilty of any violation of any provision of this Chapter or Chapters 57 or 57B of the General Statutes. If an individual fails to pass such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such individual has passed an examination as provided in this Article.

(3) Each examination shall be as the Commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of:

a. The terms and provisions of the policies or contracts of insurance he proposes to effect; or

b. The types of claims or losses he proposes to adjust; and

c. The duties and responsibilities of such a license; and

d. The current laws of this State applicable to such a license.

(4) The answers of the applicant to any such examination shall be written by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as he deems necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner is authorized to contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner is authorized to charge a reasonable fee not to exceed thirty-five dollars ($35.00), in addition to the registration fee charged under G.S. 58-634, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes.

(5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-634 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he deems necessary for the applicants' proper preparation for such exams. The Commissioner is empowered to contract directly with publishers and other suppliers for the production of such preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes.

(f) Brokers.

(1) Bond. Prior to issuance of a license as a broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in favor of the State of North Carolina for the use of aggrieved parties in the sum of not less than fifteen thousand dollars ($15,000), executed by an authorized corporate surety approved by the Commissioner. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the sum thereof. The bond shall be conditioned on the accounting by the broker (i) to any person requesting the broker to obtain insurance for moneys or premiums collected in connection therewith, (ii) to any licensed insurer or agent who provides coverage for such person with respect to any such moneys or premiums, and (iii) to any association of insurers under any plan or plans for the placement of insurance under the laws of North Carolina which afforded coverage for such person with respect to any such moneys or premiums. No such bond shall be terminated unless at least 30 days' prior written notice thereof is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the Commissioner shall notify the surety within 10 business days.

(2) Other Requirements. An applicant must hold a valid agent's license at the time of application for the bro-

Art. 45 has a delayed effective date, except § 58-614(d). See notes.

ker's license and throughout the duration of the broker's license. A broker's license shall be issued to cover only those kinds of insurance authorized by his agent's license. Suspension or revocation of the agent's license shall cause immediate revocation of the broker's license.

(g) Denial of License. — If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and notify in writing the applicant and the appointing insurer, if any, of such denial, stating the grounds therefor.

(h) Resident-Nonresident Licenses. — The Commissioner shall issue a resident or nonresident license to an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser as follows:

(1) Resident.

An individual may qualify for a license as a resident if he resides in this State. Any license issued pursuant to an application claiming residency in this State shall be void if the licensee, while holding a resident license in this State, also holds or makes application for a resident license in, or thereafter claims to be resident of, any other state, or ceases to be a resident of this State; provided, however, if the applicant is a resident of a county in another state, the border of which county is contiguous with the state line of this State, the applicant may qualify as a resident for licensing purposes in this State.

(2) Nonresident.

a. An individual may qualify for a license under this Article as a nonresident if he holds a like license in another state or territory of the United States. An individual may qualify for a license as a nonresident motor vehicle damage appraiser or a nonresident adjuster if the applicant's state of residency does not offer such licenses and such applicant meets all other requirements for licensure of a resident. A license issued to a nonresident of this State shall grant the same rights and privileges afforded a resident licensee, except as provided in subsection (i) of this section.

b. A nonresident of this State may be licensed without taking an otherwise required written examination if the Commissioner of the state of the applicant's residence certifies that the applicant has passed a similar written examination or has been a continuous holder, prior to the time such written examination was required, of a license like the license being applied for in this State.

c. Notwithstanding other provisions of this Article, no new bond shall be required for a nonresident broker if the Commissioner is satisfied that an existing bond covers his insurance business in this State.

d. Process Against Nonresident Licensees.

1. Each licensed nonresident agent, broker, adjuster, limited representative, or motor vehicle damage appraiser shall by the act of acquiring such license be deemed to appoint the Commissioner as his attorney to receive service of legal process issued against the agent, broker, adjuster, limited representative, or motor vehicle damage appraiser in this State upon causes of action arising within this State.
2. The appointment shall be irrevocable for as long as there could be any cause of action against the nonresident arising out of his insurance transactions in this State.
3. Duplicate copies of such legal process against such nonresident licensee shall be served upon the Commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the Commissioner a fee of five dollars ($5.00), taxable as costs in the action to defray the expense of such service.
4. Upon receiving such service, the Commissioner or his duly appointed deputy shall within three business days send one of the copies of the process, by registered or certified mail, to the defendant nonresident licensee at his last address of record as filed with the Commissioner.
5. The Commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant nonresident licensee, and such defendant shall not be required to appear, plead or answer until the expiration of 40 days after the date of service upon the Commissioner.

e. If the Commissioner revokes or suspends any nonresident's license through a formal proceeding under this Article, he shall promptly notify the appropriate Commissioner of the licensee's residence of such action and of the particulars thereof.

(i) Retaliatory Provision. — Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this State who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this Article, the same such requirements shall be imposed upon such residents of such other state or jurisdiction.

(j) Reciprocity Provision. — To the extent that other states that provide for the licensing and regulation of and payment of commissions to agents, limited representatives, or brokers, waive restrictions on the basis of reciprocity with

Art. 45 has a delayed effective date, except § 58-614(d). See notes.

respect to North Carolina licensees holding nonresident licenses in such states, all such restrictions on licensees from such states holding North Carolina nonresident licenses shall be waived. (1987, c. 629, s. 1; c. 864, ss. 80, 86.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — Session Laws 1987, c. 864, ss. 80 and 86, effective February 1, 1988, substituted "or an adjuster" for "adjuster, or motor vehicle damage appraiser" in subdivision (e)(1), and deleted ", by facsimile signature and seal," preceding "that the applicant has passed" in paragraph (h)(2)b.

§ 58-616. (Effective February 1, 1988) Exemption from examination.

The following are exempt from the requirement for a written examination:

(1) Any applicant for a license covering the same kind or kinds of insurance for which the applicant was licensed under a like license in this State, other than a temporary license, within the 24 months next preceding the date of application, unless such previous license was revoked, suspended, or not continued by the Commissioner.

(2) An applicant who has been licensed under a like license in another state within 24 months prior to his application for a license in this State, and who files with the Commissioner the certificate of the public official having supervision of insurance in such other state as to the applicant's license and good standing in such state.

(3) An applicant who has attained the designation of Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Life Underwriter Training Council Fellow (LUTCF) or Fellow of Life Management Institute (FLMI), shall be exempt from the examination for licenses in G.S. 58-614(c)(1) and (2).

(4) An applicant who has attained the designation of Chartered Property and Casualty Underwriter (CPCU) shall be exempt from the examination for licenses in G.S. 58-614(c)(3) and (7).

(5) Applicants for license as limited representatives or as motor vehicle damage appraisers.

(6) Applicants for license as agents for companies or associations specified in G.S. 58-124.28. (1987, c. 629, s. 1; c. 864, s. 81.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — Session Laws 1987, c. 864, s. 81, effective February 1, 1988, inserted "or as motor vehicle damage appraisers" in subdivision (5).

§ 58-617. (Effective February 1, 1988) Appointment of agents.

(a) No individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed.

(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. Upon the appointment, the individual shall be authorized to act as an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited.

(c) Within 30 days the insurer shall file in a form prescribed by the Commissioner the names, addresses, and other information required by the Commissioner for its newly-appointed agents.

(d) Every insurer shall remit in a manner prescribed by the Commissioner the appointment fee specified in G.S. 58-634 for each appointed agent.

(e) An appointment shall continue in effect as long as the appointed agent is properly licensed and the appointing insurer is authorized to transact business in this State, unless the appointment is cancelled. Upon the cancellation of an appointment the insurer shall, within 30 days, file written notice of cancellation with the Commissioner in a form prescribed by him indicating the date of cancellation. A copy shall be provided to the agent by the insurer.

(f) Prior to April 1 of each year, every insurer shall remit in a manner prescribed by the Commissioner the renewal appointment fee specified in G.S. 58-634.

(g) Any agent license in effect on February 1, 1988, shall be deemed to be an appointment for the unexpired term of that license.

(h) No insurer shall accept an insurance application from an individual who is not currently appointed by the insurer. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-618. (Effective February 1, 1988) Denial, suspension, revocation, or nonrenewal of licenses and appointments.

(a) The Commissioner may suspend, revoke, or refuse to issue or renew any license issued under this Article if, after notice to the licensee or applicant and hearing in accordance with the provisions of Article 3A of Chapter 150B, he finds as to the licensee any one or more of the following conditions:

(1) Any untrue material statement in the license application;

(2) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance;

(3) Violation of, or noncompliance with, any insurance laws, or of any lawful rule, or order of the Commissioner or of a Commissioner of another state;
(4) Obtaining or attempting to obtain any such license through misrepresentation or fraud;
(5) Improperly withholding, misappropriating, or converting to his own use any moneys belonging to policyholders, insurers, beneficiaries or others received in the course of his insurance business;
(6) Misrepresentation of the terms of any actual or proposed insurance contract;
(7) Willfully overinsuring property;
(8) Conviction of a misdemeanor involving moral turpitude, or conviction of a felony;
(9) The person has been found guilty of any unfair trade practice or fraud;
(10) In the conduct of his affairs under the license, the licensee has used fraudulent, coercive or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible;
(11) His license has been suspended or revoked in any other state, province, district, or territory;
(12) The person has forged another's name to an application for insurance; or
(13) The person has cheated on an examination for an insurance license.

(b) Notwithstanding the notice and hearing requirements of subsection (a) of this section, if the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings to suspend, revoke, or refuse renewal provided for in subsection (a) of this section. The proceedings shall be promptly commenced and determined.

(c) In the event that the action by the Commissioner is to deny or not renew an application for a license, he shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reasons for the denial or nonrenewal of the license. Within 30 days of receipt of notification the applicant or licensee may make written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner's action. Such hearing shall be scheduled within 30 days from the date of receipt of the written demand by the applicant and shall be held pursuant to the provisions of Article 3A of Chapter 150B.

(d) For the purposes of investigation under this section, the Commissioner shall have all the power conferred upon him by G.S. 58-44.4.

(e) The license of a partnership or corporation may be suspended, revoked, not continued, or refused if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and such violation was not reported to the Commissioner nor corrective action taken in relation thereto.

Art. 45 has a delayed effective date, except § 58-614(d). See notes.

(f) Upon the filing for protection under the United States Bankruptcy Code by any person licensed under this Article, or by any insurance agency in which such licensed person holds a position of employment, management or ownership, such person shall notify the Commissioner of the filing for protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any person licensed under this Article, or for any insurance agency in which such licensed person holds a position of employment, management or ownership, such person shall notify the Commissioner of the appointment within three business days thereafter. The willful failure to notify the Commissioner within three business days after the filing for protection or the appointment of a receiver shall, after hearing, cause the license of any person failing to make such notification to be suspended for a period of not less than 60 days nor more than three years, in the discretion of the Commissioner.

(g) If the Commissioner refuses to grant a license, or suspends, or revokes a license, any appointment of such applicant or licensee shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements of this Article.

(h) The provisions of G.S. 58-9.7 apply to any person subject to licensure under this Article.

(i) No person shall be issued a license or appointment to enter the employment of any agency or person, which agency or person is at that time found by the Commissioner to be in violation of any of the insurance laws of this State, or which has been in any manner disqualified under the laws of this State to engage in the insurance business. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-619. (Effective February 1, 1988) Surrender, loss or destruction of license.

(a) The Commissioner shall notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or nonrenewal of license by the Commissioner.

(b) Upon suspension, revocation or reinstatement of any license, the Commissioner shall notify the Central Office of the NAIC.

(c) Any licensee who ceases to maintain his residency in this State as defined in G.S. 58-615 shall deliver his insurance license or licenses to the Commissioner by personal delivery or by mail within 30 days after terminating said residency.

(d) The Commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this Article upon a written request from the licensee and payment of appropriate fees. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-620. (Effective February 1, 1988) Cancellation reports.

(a) If a licensee's appointment or license is cancelled by the insurer or other employer, such insurer or employer shall give written notice of the cancellation and the effective date thereof to the Commissioner within 30 days, and to the licensee where reasonably possible. The Commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to give such notice to the licensee. Nothing in this subsection affects any cancellation provisions in any contract between a licensee and an insurer or other employer.

(b) All such notices of cancellation shall be filed within 30 days in such form prescribed by the Commissioner stating the date of such cancellation.

(c) In the event the cancellation is for any of the causes listed under G.S. 58-618, the insurer shall so notify the Commissioner. The contents of such notification shall be deemed to be privileged in any civil action between the reporting insurer or other employer and the terminated licensee. (1987, c. 629, s. 1; c. 864, s. 88.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, inserted "or other employer" in the second sentence of subsection (c).

§ 58-621. (Effective February 1, 1988) Countersignature and related laws.

Subject to the retaliatory provisions of G.S. 58-615(i), there shall be no requirement that a licensed resident agent or broker must countersign, solicit, transact, take, accept, deliver, record, or process in any manner an application, policy, contract, or any other form of insurance on behalf of a nonresident agent or broker or an authorized insurer; or share in the payment of commissions, if any, related to such business. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-622. (Effective February 1, 1988) Temporary licensing.

(a) The Commissioner may issue a temporary license as an agent, broker, or limited representative for a period without requiring an examination if the Commissioner deems that such temporary license is necessary for the servicing of insurance business in the following cases:

(1) To the surviving spouse or next of kin, or to the administrator or executor or employee thereof, of such deceased licensee or to the spouse, next of kin, employee, or legal guardian of such licensee who becomes disabled;

(2) To a member or employee of a licensed partnership or officer or employee of a licensed corporation, upon the death or

disability of an individual designated in or registered as to the license;

(3) To the designee of a licensee entering active service in the armed forces of the United States of America; or

(4) To an applicant for licensing who is appointed as an agent of a life insurer that writes debit or industrial life or health insurance.

(b) To be eligible for any such temporary license, an individual must be qualified as for a permanent license except as to experience, training or the taking of the examination. Upon meeting all license requirements the agent will be issued a permanent license. The temporary license will be cancelled and will be deemed to be a company appointment by the sponsoring company, if any.

(c) No temporary license shall be effective for more than 90 days in any 12-month period and shall automatically terminate upon such temporary licensee's failing the examination required in G.S. 58-615.

(d) An individual requesting a temporary license on account of death or disability of an agent or broker shall be licensed to represent only those insurers that had appointed such agent at the time of death or commencement of disability.

(e) The fee paid to the Commissioner for issuance of a temporary license shall be credited toward the fee required for an appointment by the sponsoring company that is recorded upon the licensee's qualifying for a permanent license. (1987, c. 629, s. 1; c. 864, ss. 82, 83.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, added the last sentence of subsection (b), and substituted "an appointment by the sponsoring company that is recorded upon the licensee's qualifying for a permanent license" for "the permanent license that is issued to replace the temporary license" in subsection (e).

§ 58-623. (Effective February 1, 1988) Special provisions for adjusters and motor vehicle damage appraisers.

(a) It shall be unlawful and cause for revocation of license for a licensed adjuster to engage in the practice of law.

(b) On behalf and on request of an insurer by which he is appointed or for which he is licensed, any agent or limited representative may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster, provided: In no event may any agent or limited representative adjust any losses in any amount where his remuneration for the sale of insurance is in any way dependent upon the adjustment of such losses.

(c) Upon the filing of the application for the license as adjuster and the advance payment of the examination fee and upon the filing with the Commissioner of a certificate signed by the employer of the applicant certifying that the applicant is an individual of good character and is employed by the signer of the certificate and will operate as a student or learner under the instruction and gen-

eral supervision of a licensed adjuster, and that the employer will be responsible for the adjustment acts of the learner during the learning period, the Commissioner may issue to the applicant a learner's permit authorizing the applicant to act as an adjuster for a learning period of 90 days without a requirement of any other or additional license; provided that not more than one learner permit shall ever be issued to one individual.

(d) No license shall be required of an adjuster licensed as such in another state for the adjustment in this State of a single loss, or of losses arising out of a catastrophe common to all such losses; provided that such adjuster notifies the Commissioner in writing prior to the adjusting of such loss or losses.

(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in such other state (if such state requires a license), to act as an adjuster in this State without a North Carolina license, for emergency insurance adjustment work, for a period of not exceeding 30 days, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work.

(f) The Commissioner may permit an experienced motor vehicle damage appraiser who is regularly appraising in another state and who is licensed in such other state (if such state requires a license) to act as a motor vehicle damage appraiser in this State without a North Carolina license for emergency motor vehicle damage appraisal work for a period not exceeding 30 days done for an employer who notifies the Commissioner, in writing, at the beginning of the period of emergency appraisal work and who is:

(1) An insurance adjuster licensed by this State;
(2) A motor vehicle damage appraiser licensed by this State;
(3) A regular employer of one or more insurance adjusters licensed by this State; or
(4) A regular employer of one or more motor vehicle damage appraisers licensed by this State. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-624. (Effective February 1, 1988) Twisting with respect to insurance policies; penalties.

No licensee shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of G.S. 58-9.7 and 58-618. (1987, c. 629, s. 1; c. 864, s. 75.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 58-625. (Effective February 1, 1988) Discrimination forbidden.

No agent or representative of any company doing the business of insurance as defined in G.S. 58-72 shall make any discrimination in favor of any person. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-626. (Effective February 1, 1988) Rebates and charges in excess of premium prohibited; exceptions.

(a) No insurer, agent, broker or limited representative shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner of Insurance. No insurer, agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, brokers and limited representatives, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond.

(b) No insurer, agent, broker, or limited representative shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with the issuance or renewal of a contract of insurance, which money or other consideration is in addition to the filed and approved premium for such contract, unless the applicant consents in writing before any services are rendered. (1987, c. 629, s. 1; c. 864, ss. 49, 89.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — Session Laws 1987, c. 864, ss. 49 and 89, effective February 1, 1988, inserted "; exceptions" in the catchline, and inserted "insurer" following "No" at the beginning of the first and second sentences of subsection (a) and at the beginning of the first sentence of subsection (b).

§ 58-627. (Effective February 1, 1988) Rebate of premiums on credit life and credit accident and health insurance; retention of funds by agent.

It shall be unlawful for any insurance carrier, or officer, agent or representative of an insurance company writing credit life and credit accident and health insurance, as defined in G.S. 58-195.2 and G.S. 58-254.8, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans, to permit any agent or representative of such company to retain any portion of funds received for the payment of losses incurred, or to be incurred, under such policies of insurance issued by such company, or to pay, allow, permit, give or offer to pay, allow, permit or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium, to any loan agency, insurance agency or broker, or to any creditor of the debtor on whose account the insurance was issued, or to any person, firm or corporation which received a commission or fee in connection with the issuance of such insurance: Provided, that this section shall not prohibit the payment of commissions to a licensed insurance agent or agency or limited representative on the sale of a policy or credit life and credit accident and health insurance, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans.

It shall be unlawful for any agent, agency, broker, limited representative, or insured named in any such policy, or for any loan agency or broker, or any agent, officer or employee of any loan agency or broker to receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of the premium as set out in this section. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-628. (Effective February 1, 1988) Agents personally liable; representing unlicensed company prohibited; penalty.

Any person representing an insurer is personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for any company not authorized to do business in this State. A person or citizen of the State who fills up or signs any open policy, certificate, blank or coupon of, or furnished by, an unlicensed company, agent, broker or limited representative, the effect

of which is to bind any insurance in an unlicensed company on property in this State, is the representative of such company, and personally liable for all licenses and taxes due on account of such transaction. If any person shall unlawfully solicit, negotiate for, collect or transmit a premium for a contract of insurance or act in any way in the negotiation or transaction of any unlawful insurance with an insurance company not licensed to do an insurance business in North Carolina, he shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-629. (Effective February 1, 1988) Payment of premium to agent valid; obtaining by fraud a crime.

Any agent, broker or limited representative who acts for a person other than himself negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent, whatever conditions or stipulations may be contained in the policy or contract. Such agent, broker or limited representative knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or by imprisonment for not more than one year, or both, in the discretion of the court. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-630. (Effective February 1, 1988) False statements in applications for insurance.

If any agent, examining physician, applicant, or other person shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for insurance, or shall make any such statement for the purpose of obtaining any fee, commission, money or benefit from any company engaged in the business of insurance in this State, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or by imprisonment for not less than 30 days nor more than one year, or both, in the discretion of the court. This section shall also apply to contracts and certificates issued under General Statutes Chapters 57 and 57B. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-631. (Effective February 1, 1988) Agents signing certain blank policies.

Any agent or limited representative who signs any blank contract or policy of insurance is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000); provided, however, that transportation ticket policies of accident insurance and baggage insurance policies may be countersigned in blank for issuance only through coin-operated machines, subject to regulations prescribed by the Commissioner. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-632. (Effective February 1, 1988) Adjuster acting for unauthorized company.

If any person shall act as adjuster on a contract made otherwise than as authorized by the laws of this State, or by any insurance company or other person not regularly licensed to do business in this State, or shall adjust or aid in the adjustment, either directly or indirectly, of a claim arising under a contract of insurance not authorized by the laws of the State, he shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisoned not less than six months nor more than two years, or both, in the discretion of the court. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

§ 58-633. (Effective February 1, 1988) Agent, adjuster, etc., acting without a license or violating insurance law.

If any person shall assume to act either as principal, agent, broker, limited representative, adjuster or motor vehicle damage appraiser without license as is required by law or pretending to be a principal, agent, broker, adjuster or licensed motor vehicle damage appraiser, shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, investigate or advise relative to the nature and amount of damages to motor vehicles or the amount necessary to effect repairs thereto, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal or agent shall violate any provision of law contained in this Chapter, the

punishment for which is not elsewhere provided for, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine or [of] not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court. (1987, c. 629, s. 1.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

The word "of" has been inserted in brackets near the end of the section as the word apparently intended.

§ 58-634. (Effective February 1, 1988) Fees.

(a) The following table indicates the annual fees that are required for the respective licenses issued under this Article and Article 36 of this Chapter:

Adjuster	$50.00
Adjuster, crop hail only	10.00
Agent appointment cancellation (paid by insurer)	5.00
Agent appointment, individual	10.00
Agent appointment, nonindividual	25.00
Agent, overseas military	10.00
Broker, nonresident	50.00
Broker, resident	25.00
Limited representative	10.00
Limited representative cancellation (paid by insurer)	5.00
Motor vehicle damage appraiser	50.00
Surplus lines licensee, corporate	50.00
Surplus lines licensee, individual	50.00

These fees are in lieu of any other license fees. Fees paid by an insurer on behalf of a person who is licensed or appointed to represent the insurer shall be paid to the Commissioner on a quarterly or monthly basis, in the discretion of the Commissioner.

(b) Whenever a temporary license may be issued pursuant to this Article, the fee shall be at the same rate as provided in subsection (a) of this section; and any amounts so paid for a temporary license may be credited against the fee required for an appointment by the sponsoring company.

(c) Any person not registered who is required by law or administrative rule to secure a license shall, upon application for registration, pay to the Commissioner a fee of ten dollars ($10.00). In the event additional licensing for other kinds of insurance is requested, a fee of ten dollars ($10.00) shall be paid to the Commissioner upon application for registration for each additional kind of insurance.

(d) The requirement for an examination or a registration fee does not apply to agents for domestic farmers' mutual assessment fire insurance companies or associations specified in G.S. 105-228.4.

(e) In the event a license issued under this Article is lost, stolen, or destroyed, the Commissioner may issue a duplicate license upon a written request from the licensee and payment of a fee of one dollar ($1.00). (1987, c. 629, s. 1; c. 864, ss. 84, 85.)

Editor's Note. — Session Laws 1987, c. 629, s. 22 makes this Article effective February 1, 1988, except that subsection (d) of § 58-614 is made effective October 1, 1987.

Effect of Amendments. — Session Laws 1987, c. 864, ss. 84 and 85, effective August 14, 1987, inserted "or appointed" in the second paragraph of subsection (a) and substituted "an appointment by the sponsoring company" for "issuance of the permanent license" at the end of subsection (b).

Chapter 58A.

North Carolina Health Insurance Trust Commission.

Sec.
58A-1. Short title.
58A-2. Legislative intent.
58A-3. Commission authorized, duties, program eligibility requirements, powers.
58A-4. Commission composition; appointment; terms; reimbursement; and liability.
58A-5. Licensing; fiscal control.

§ 58A-1. Short title.

This Chapter shall be known as and may be cited as the North Carolina Health Insurance Trust Commission Act. (1987, c. 765, s. 1.)

Editor's Note. — Session Laws 1987, c. 765, s. 3 makes this Chapter effective upon ratification. The act was ratified August 11, 1987.

§ 58A-2. Legislative intent.

The General Assembly finds that there is insufficient group health insurance coverage available to employees of many small businesses in North Carolina, that uninsured employees of these small businesses represent a significant portion of the uncompensated costs of health care providers, and that uninsured individuals have impaired access to health care services and corresponding lower health status. It is the intent of the General Assembly that a Commission, to be known as the "North Carolina Health Insurance Trust Commission", be organized for the purpose of assisting in making economic health insurance available to individuals employed by small businesses, and their dependents, who are presently uninsured. (1987, c. 765, s. 1.)

§ 58A-3. Commission authorized, duties, program eligibility requirements, powers.

(a) There is created the "North Carolina Health Insurance Trust Commission", hereafter referred to as the "Commission".

(b) The Commission shall:

(1) Facilitate the provision of group health insurance for employers with 25 or fewer employees, their employees, and their employees' families;

(2) Arrange for the development of a health insurance benefit plan to provide coverage for primary and ambulatory health care and inpatient hospital care, including the development of pilot programs;

(3) Establish administrative and accounting procedures for the operation of the Commission;

(4) Establish employer and employee eligibility criteria for participation in the program;

(5) Establish participation criteria governing eligibility of authorized insurers, authorized health maintenance organi-

zations, and others, operating in accordance with the General Statutes, to participate in the program;

(6) Establish procedures under which applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the Commission;

(7) Contract with authorized insurers to provide services to the Commission;

(8) Develop and implement a plan to publicize the Commission, the eligibility requirements for the program, the procedures for enrollment in the program, and to maintain public awareness of the Commission and the program;

(9) Secure staff necessary to properly administer the Commission. Staff costs shall be funded from grant funds, State and local matching funds, and other sources. The Commission shall be located in the Department of Insurance and shall be given necessary administrative support by the Department of Insurance;

(10) Enter into contracts necessary to carry out the provisions of this Chapter; and

(11) Provide an annual report to the General Assembly each year beginning not later that [than] March 1, 1989.

(c) The Commission shall set business and employee eligibility standards which shall define limits on employers and employees eligible for participation in the program. Small businesses eligible for participation shall have 25 or fewer full-time employees. Employer eligibility standards shall include a provision that the employer must attest to not having offered or provided any other health insurance benefits in the two-year period prior to the employer's date of application to the program. The Commission shall make all necessary provisions to prevent the payment of or reimbursement for any claim or expense which may be covered under a separate health insurance or health care services plan under which an individual who participates in the program may be covered.

(d) The Commission shall have all powers necessary or convenient to carry out the purposes and provisions of this Chapter, including, but not limited to, the power to receive and accept grants, loans, and advances of funds from any public or private agency, for, or in aid of, the purpose of this Chapter, and to receive and accept contributions, from any source, of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this Chapter. (1987, c. 765, s. 1.)

Editor's Note. — It appears that the word "than" was intended in subdivision (b)(11), rather than "that."

§ 58A-4. Commission composition; appointment; terms; reimbursement; and liability.

(a) The Commission shall consist of ten members:

(1) One member shall represent small businesses whose employees are eligible to participate in the program established by the Commission;

(2) One member shall be a representative of an acute care hospital providing services to the program;

(3) One member shall be a representative of a domestic health care insurer licensed pursuant to Chapter 57 of the General Statutes;

(4) One member shall be a representative of a domestic health care insurer licensed pursuant to Chapter 58 of the General Statutes;

(5) One member shall be the Secretary of Human Resources or his designee;

(6) One member shall be the Commissioner of Insurance or his designee;

(7) One member shall be a representative of the North Carolina business community whose company provides health insurance to its employees;

(7a) One member shall be a representative of the public;

(8) One member shall be a physician licensed to practice medicine in North Carolina and providing services to the program; and

(9) One member shall be a representative of the public, be familiar with health insurance issues, and be an advocate of low and moderate income employees.

(b) The Commission shall be appointed by the General Assembly, in accordance with G.S. 120-121, in the following manner:

(1) One representative of small business employers eligible to participate in the program shall be appointed for an initial term of three years;

(1a) One person who shall be a representative of the public shall be appointed for an initial term of one year;

(2) One domestic health care insurer licensed pursuant to Chapter 57 of the General Statutes shall be appointed for an initial term of two years; and

(3) One physician licensed to practice medicine in North Carolina shall be appointed for an initial term of one year

upon the recommendation of the Speaker of the House of Representatives; and

(1) One representative of an acute care hospital shall be appointed for an initial term of three years;

(2) One domestic health care insurer licensed pursuant to Chapter 58 of the General Statutes shall be appointed for an initial term of two years;

(3) One representative of the business community whose company provides health insurance to its employees shall be appointed for an initial term of two years; and

(4) One representative who shall represent the public and who is familiar with health insurance issues to serve as an advocate for low and moderate income employees shall be appointed for an initial term of one year

upon the recommendation of the President of the Senate.

Initial one year terms shall expire June 30, 1988, initial two year terms shall expire June 30, 1989, and initial three year terms shall expire June 30, 1990.

After the initial terms expire, terms shall be for three years. Vacancies shall be filled in accordance with G.S. 120-122.

(c) Commission members may be reimbursed by the Commission for actual and necessary expenses incurred by them as members, in accordance with G.S. 138-5, but may not otherwise be compensated for their services.

(d) There shall be no liability on the part of, and no cause of action of any nature shall arise against any member of the Commission, its employees or agents for any action taken in good faith and without malice, in performance of their powers and duties under this Chapter. (1987, c. 765, s. 1.)

§ 58A-5. Licensing, fiscal control.

(a) The Commission is not an insurer. The Department of Insurance may require that any marketing representatives used and compensated by the Commission be licensed as representatives of insurance companies, health maintenance organizations, or other insurance providers, with whom the Commission may contract.

(b) The Commissioners shall have complete fiscal control over the Commission and shall be responsible for all Commission operations. (1987, c. 765, s. 1.)

Chapter 59.

Partnership.

Article 1.

Uniform Limited Partnership Act.

Sec.
59-1 to 59-30.1. [Repealed.]

Article 2.

Uniform Partnership Act.

Part 6. Dissolution and Winding Up.

59-62. Dissolution by decree of court.

Article 4.

Business Under Assumed Name Regulated.

59-90 to 59-100. [Reserved.]

Article 5.

Revised Uniform Limited Partnership Act.

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Article 1.

Uniform Limited Partnership Act.

§§ 59-1 to 59-30.1: Repealed by Session Laws 1985 (Regular Session, 1986), c. 989, s. 2, effective October 1, 1986.

Cross References. — For the Revised Uniform Limited Partnership Act, see § 59-101 et seq.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 989, s. 2 enacted a new Revised Uniform Limited Partnership Act, as Article 5 of Chapter 59, and repealed this Article, effective October 1, 1986. Limited partnerships created after October 1, 1986, are governed by Article 5 of Chapter 59. As to the effective date and applicability of various provisions of the new Article and of this Article to transactions entered into and partnerships formed before October 1, 1986, see § 59-1104.

Section 1 of Session Laws 1985 (Reg. Sess., 1986), c. 989 added a new § 59-30.1 to repealed Article 1, reading as follows: "§ 59-30.1. No limited partnership shall be formed under this Article after September 30, 1986."

Article 2.

Uniform Partnership Act.

Part 1. Preliminary Provisions.

§ 59-31. Name of Article.

CASE NOTES

Applied in Hewes v. Wolfe, 74 N.C. App. 610, 330 S.E.2d 16 (1985).

§ 59-34. Rules of construction.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Part 2. Nature of a Partnership.

§ 59-36. Partnership defined.

CASE NOTES

Partnership is a legal concept but the determination of the existence or not of a partnership, as in the case of a trust, involves inferences drawn from an analysis of "all the circumstances attendant on its creation and operation." Peed v. Peed, 72 N.C. App. 549, 325 S.E.2d 275, cert. denied, 313 N.C. 604, 330 S.E.2d 612 (1985).

To make a partnership, etc. —

In accord with bound volume. See Zickgraf Hardwood Co. v. Seay, 60 N.C. App. 128, 298 S.E.2d 208 (1982).

A voluntary association of partners may be shown without proving an express agreement to form a partnership; and a finding of its existence may be based upon a rational consideration of the acts and declarations of the parties, warranting the inference that the parties understood that they were partners and acted as such. Peed v. Peed, 72 N.C. App. 549, 325 S.E.2d 275, cert. denied, 313 N.C. 604, 330 S.E.2d 612 (1985).

Where a person merely makes repayable advances and loans of money to another, it cannot be inferred from that fact that they are partners. Peed v. Peed, 72 N.C. App. 549, 325 S.E.2d 275, cert. denied, 313 N.C. 604, 330 S.E.2d 612 (1985).

A partnership may be formed by an oral, etc. —

A partnership may be formed orally or by the agreement or conduct of the parties, either express or implied. Peed v. Peed, 72 N.C. App. 549, 325 S.E.2d 275, cert. denied, 313 N.C. 604, 330 S.E.2d 612 (1985).

Failure to Show Partnership. — Where plaintiffs, who filed an action to enjoin foreclosure on real property, contending that the option contract, contract to purchase and note entered into between plaintiffs and defendants created a partnership relationship rather than a mortgagee-mortgagor relationship, failed to show probable cause to believe that they would be able to establish the partnership rights they asserted, the trial court did not err in denying a preliminary injunction and allowing foreclosure to proceed. Carefree Carolina Communities, Inc. v. Cilley, 79 N.C. App. 742, 340 S.E.2d 529, cert. denied, 316 N.C. 374, 342 S.E.2d 891 (1986).

Applied in Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268 (1982).

Cited in DuBose Steel, Inc. v. Faircloth, 59 N.C. App. 722, 298 S.E.2d 60 (1982).

§ 59-37. Rules for determining the existence of a partnership.

CASE NOTES

Creation by Express or Implied Agreement or Conduct. — Not only may a partnership be formed orally, but it may be created by the agreement or conduct of the parties, either express or implied. Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268, cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

Express Agreement Not Required. — A voluntary association of partners may be shown without proving an express agreement to form a partnership; and a finding of its existence may be based upon a rational consideration of the acts and declarations of the parties, warranting the inference that the parties understood that they were partners and acted as such. Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268, cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

The determination of whether a partnership exists, and whether the parties are co-owners, involves examining all the circumstances. Peed v. Peed, 72 N.C. App. 549, 325 S.E.2d 275, cert. denied, 313 N.C. 604, 330 S.E.2d 612 (1985).

Inferences from Circumstances of Creation and Operation. — Partner-

ship is a legal concept but the determination of the existence or not of a partnership, as in the case of a trust, involves inferences drawn from an analysis of all the circumstances attendant on its creation and operation. Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268, cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

Where one person is an employee of another, and receives wages, then the two are not partners. Peed v. Peed, 72 N.C. App. 549, 325 S.E.2d 275, cert. denied, 313 N.C. 604, 330 S.E.2d 612 (1985).

Failure to Show Partnership. — Where plaintiffs, who filed an action to enjoin foreclosure on real property, contending that the option contract, contract to purchase and note entered into between plaintiffs and defendants created a partnership relationship rather than a mortgagee-mortgagor relationship, failed to show probable cause to believe that they would be able to establish the partnership rights they asserted, the trial court did not err in denying a preliminary injunction and allowing foreclosure to proceed. Carefree Carolina Communities, Inc. v. Cilley, 79 N.C. App. 742, 340 S.E.2d 529, cert. denied, 316 N.C. 374, 342 S.E.2d 891 (1986).

Applied in Zickgraf Hardwood Co. v. Seay, 60 N.C. App. 128, 298 S.E.2d 208 (1982).

§ 59-38. Partnership property.

CASE NOTES

Cited in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Part 3. Relations of Partners to Persons Dealing with the Partnership.

§ 59-39. Partner agent of partnership as to partnership business.

CASE NOTES

In order for a written instrument to be binding on a partnership, the instrument must be executed in the partnership name. Oxford Plastics v. Goodson, 74 N.C. App. 256, 328 S.E.2d 7 (1985).

Conveyance with View to Dissolution. — Where a conveyance was not for apparently carrying on in the usual way the business of the partnership, but was with a view to the immediate dissolution of the partnership, neither § 59-40(d) nor subsection (a) of this section applies. Instead, subsection (b) of this section applies. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Authority of Partner to Bind Firm. — In the absence of authority expressly conferred, a partner's authority to bind his firm is restricted to things done by him within the scope of partnership business. Investors Title Ins. Co. v. Herzig, 83 N.C. App. 392, 350 S.E.2d 160 (1986).

Acts of attorney in certifying title to his own property to obtain a personal loan, not to further any partnership business, were not "for apparently carrying on in the usual way the business of the partnership" and were not "within the ordinary course of the business of the partnership," and under the facts and circumstances, an ordinarily prudent person in plaintiff's position as a title insurance company would have been put on notice that the attorney was acting on his own account, in his individual capacity and for his own benefit, and hence not within the scope of his apparent authority as a member of the partnership. Investors Title Ins. Co. v. Herzig, 83 N.C. App. 392, 350 S.E.2d 160 (1986).

Cited in Blow v. Shaughnessy, 68 N.C. App. 1, 313 S.E.2d 868 (1984).

§ 59-40. Conveyance of real property of the partnership.

CASE NOTES

How Title to Real Property Held. — Under this Article, title to real property owned by a partnership may be held either in the partnership name or in the name of some or all of the partners. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Conveyance with View to Dissolution. — Where a conveyance was not for apparently carrying on in the usual way the business of the partnership, but was with a view to the immediate dissolution of the partnership, neither subsection (d) of this section nor § 59-39(a) applies. Instead, § 59-39(b) applies. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Land owned individually by one who entered into a partnership could not become a partnership asset absent some written agreement sufficient to satisfy the statute of frauds, despite subsection (c) of this section, which recognizes that title to real property may be in the name of one or more, but not all the partners, and § 59-56, which makes a partner's interest in partnership property, even real property, a personal property interest. Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

§ 59-43. Partnership bound by partner's wrongful act.

CASE NOTES

Authority of Partner to Bind Firm. — In the absence of authority expressly conferred, a partner's authority to bind his firm is restricted to things done by him within the scope of partnership business. Investors Title Ins. Co. v. Herzig, 83 N.C. App. 392, 350 S.E.2d 160 (1986).

Acts of attorney in certifying title to his own property to obtain a personal loan, not to further any partnership business, were not "for apparently carrying on in the usual way the business of the partnership" and were not "within the ordinary course of the business of the partnership," and under the facts and circumstances, an ordinarily prudent person in plaintiff's position as a title insurance company would have been put on notice that the attorney was acting on his own account, in his individual capacity and for his own benefit, and hence not within the scope of his apparent authority as a member of the partnership. Investors Title Ins. Co. v. Herzig, 83 N.C. App. 392, 350 S.E.2d 160 (1986).

§ 59-45. Nature of partner's liability.

CASE NOTES

Partner Individually Must Be Served With Process Before Personally Liable. — Each partner in a partnership is jointly and severally liable for a tort committed in the course of the partnership business, and the injured party may sue all members of the partnership or any one of them at his election. But a partner who is not served with summons is not bound beyond his partnership assets. Stevens v. Nimocks, 82 N.C. App. 350, 346 S.E.2d 180, cert. denied, 318 N.C. 511, 349 S.E.2d 873 (1986), reconsideration denied, 318 N.C. 702, 351 S.E.2d 760 (1987).

While a partnership cannot insulate

its members from liability, it is a distinct legal entity, and the act of a partner done in his representative capacity is not per se an action made in his individual capacity; the law clearly requires that a partner individually be served with process before being held personally liable for judgment against the partnership. Stevens v. Lawyers Mut. Liab. Ins. Co., 107 F.R.D. 112 (E.D.N.C. 1985).

Actual Notice is Not Sufficient. — Actual notice of a suit against the partnership will not cure the requirement that a partner must be served with a summons to be held individually liable. Stevens v. Nimocks, 82 N.C. App. 350, 346 S.E.2d 180, cert. denied, 318 N.C. 511, 349 S.E.2d 873 (1986), reconsideration denied, 318 N.C. 702, 351 S.E.2d 760 (1987).

Nor is Participation in Suit against Partnership. — A partner who participates in a malpractice suit by acquainting himself with the facts of the pending suit and notifying his insurance carrier of the suit does not subject himself to individual liability when the Rules of Civil Procedure require that he be served with process individually before being held individually liable. Stevens v. Nimocks, 82 N.C. App. 350, 346 S.E.2d 180, cert. denied, 318 N.C. 511, 349 S.E.2d 873 (1986), reconsideration denied, 318 N.C. 702, 351 S.E.2d 760 (1987).

Or Verification of Answer. — Defendant partner's verification of original answer where he was sued in his partnership capacity did not subject him to individual liability. Stevens v. Nimocks, 82 N.C. App. 350, 346 S.E.2d 180, cert. denied, 318 N.C. 511, 349 S.E.2d 873 (1986), reconsideration denied, 318 N.C. 702, 351 S.E.2d 760 (1987).

Partnership is represented by partner who is served, and as to him judgment in action in which he is served would be binding upon him individually, and as to partnership property; but as to a partner not served with a summons, the judgment would not be binding on him individually. Stevens v. Lawyers Mut. Liab. Ins. Co., 107 F.R.D. 112 (E.D.N.C. 1985).

Repayment of Note Out of Partnership Funds. — Regardless of whether a note was signed by the parties as individuals or as partners, its legal effect was the same. Nevertheless, in a dissolution action, where it appeared that the note was executed in furtherance of the partnership, and that there may have been partnership funds available to satisfy it, the court should have determined the nature of the note and ordered it repaid out of partnership funds if possible. Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

Cited in Stevens v. Lawyers Mut. Liab. Ins. Co., 789 F.2d 1056 (4th Cir. 1986).

§ 59-46. Partner by estoppel.

CASE NOTES

Cited in DuBose Steel, Inc. v. Faircloth, 59 N.C. App. 722, 298 S.E.2d 60 (1982).

Part 5. Property Rights of a Partner.

§ 59-54. Extent of property rights of a partner.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-55. Nature of a partner's right in specific partnership property.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-56. Nature of partner's interest in the partnership.

CASE NOTES

Land owned individually by one who entered into a partnership could not become a partnership asset absent some written agreement sufficient to satisfy the statute of frauds, despite § 59-40(c), which recognizes that title to real property may be in the name of one or more, but not all the, partners, and this section, which makes a partner's interest in partnership property, even real property, a personal property interest. Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

Part 6. Dissolution and Winding Up.

§ 59-59. Dissolution defined.

CASE NOTES

Quoted in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-60. Partnership not terminated by dissolution.

CASE NOTES

Cited in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-61. Causes of dissolution.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-62. Dissolution by decree of court.

(a) On application by or for a partner the court shall decree a dissolution whenever:

(1) A partner has been adjudicated incompetent or is shown to be of unsound mind,

(2) A partner becomes in any other way incapable of performing his part of the partnership contract,

(3) A partner has been guilty of such conduct as tends to affect prejudically the carrying on of the business,

(4) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(5) The business of the partnership can only be carried on at a loss,

(6) Other circumstances render a dissolution equitable.

(1941, c. 374, s. 32; 1985, c. 589, s. 29.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 589, s. 64 provides that prosecutions for offenses occurring before the effective date of the act (Jan. 1, 1986) are not abated or affected by the act, and that the statutes that would be applicable but for the act remain applicable to those prosecutions.

Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Session Laws 1985, c. 589, s. 65 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective Jan. 1, 1986, substituted "adjudicated incompetent" for "declared a lunatic in any judicial proceeding" in subdivision (a)(1).

CASE NOTES

Order of Dissolution Upheld. — An order of dissolution, having been prayed for and not resisted, and the court's order having resolved all differences between the parties regarding liability to each other, as well as having resolved that the partnership would conduct no further business, undoubtedly was appropriate. Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

§ 59-63. General effect of dissolution on authority of partner.

CASE NOTES

Sale of partnership assets upon dissolution is an act appropriate for winding up. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-64. Right of partner to contribution from co-partners after dissolution.

CASE NOTES

Applied in Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

§ 59-65. Power of partner to bind partnership to third persons after dissolution; publication of notice of dissolution.

CASE NOTES

Applied in Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

Quoted in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-68. Rights of partners to application of partnership property.

CASE NOTES

Applied in Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

Article 4.

Business Under Assumed Name Regulated.

§§ 59-90 to 59-100: Reserved for future codification purposes.

Article 5.

Revised Uniform Limited Partnership Act.

Part 1. General Provisions.

§ 59-101. Short title.

This Article may be cited as the Revised Uniform Limited Partnership Act. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

CASE NOTES

When Partner May Maintain Action Against Copartner. — As a general rule, one partner cannot sue another partner at law until there has been a complete settlement of the partnership affairs and a balance struck. However, a partner may maintain an action at law against his copartner upon claims growing out of the following state of facts: (1) Where the partnership is terminated, all debts paid, and the partnership affairs otherwise adjusted with nothing remaining to be done but to pay over the amounts due by one to the other, such amount involving no complicated reckoning. (2) Where the partnership is for a single venture or special purpose which has been accomplished, and nothing remains to be done except to pay over the claimant's share. (3) When the joint property has been wrongfully destroyed or converted. Roper v. Thomas, 60 N.C. App. 64, 298 S.E.2d 424 (1982), cert. denied, 308 N.C. 191, 302 S.E.2d 244 (1983), decided under former Article 1 of this Chapter.

§ 59-102. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) "Conformed copy" shall include a photostatic or other photographic copy of the original document.

(3) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) "Foreign limited partnership" means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) "Partner" means a limited or general partner.

(10) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(11) "Partnership interest" means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-103. Name.

(a) The name of the limited partnership shall contain without abbreviation the words "limited partnership";

(b) The limited partnership name shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner;

(c) The limited partnership name shall not contain any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its certificate of limited partnership;

(d) The limited partnership name shall be sufficiently unique to permit separate indexing in the limited partnership records in the Office of the Secretary of State. Filing of name does not confer any right to the use of the name in commerce. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 1.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, rewrote subsection (d), which read "The limited partnership name shall not be the same as, or deceptively similar to, the name of any domestic corporation or limited partnership or of any foreign corporation or limited partnership authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved or registered by some other person in the manner prescribed by G.S. 59-104."

OPINIONS OF ATTORNEY GENERAL

Domestic limited partnerships may not operate under assumed names in North Carolina. See Opinion of Attorney General to Mr. Clyde Smith, Deputy Secretary of State, — N.C.A.G. — (June 25, 1987).

§ 59-104. Reservation of name.

(a) The exclusive right to a limited partnership name not prohibited by G.S. 59-103 may be reserved for a period of 90 days by:

(1) Any person intending to organize a limited partnership under this Article;

(2) Any domestic limited partnership intending to change its name;

(3) Any foreign limited partnership intending to make application for a certificate of authority to transact business in this State;

(4) Any foreign limited partnership authorized to transact business in this State and intending to change its name;

(5) Any person intending to organize a foreign limited partnership and intending to have such limited partnership make application for a certificate of authority to transact business in this State.

(b) The same name shall not be reserved for two or more consecutive 90-day periods by the same applicant or for the use and benefit of the same applicant; nor shall such consecutive reservations be made of names so similar as to fall within the prohibition of this section.

(c) The reservation of name, pursuant to subsection (a), shall be made by filing with the Secretary of State an executed application therefor stating the name and address of the applicant, and the Secretary of State shall, upon tender of the fee hereinafter prescribed, reserve the name exclusively for the applicant unless he finds that the name is not available under the provisions of this section.

(d) The exclusive right to a specified limited partnership name reserved hereunder, may, on tender of the fee hereinafter prescribed, be transferred to any other limited partnership by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(e) The Secretary of State may revoke any reservation of a limited partnership name if he finds, upon a hearing held not less than five days after written notice has been sent by registered mail to the person or limited partnership who made the reservation, that the application therefor or any transfer thereof was not made in good faith or that any statement contained in the application for reservation was false when such application was filed or has thereafter become false.

(f) The use by a limited partnership of a name in violation of this section may be enjoined notwithstanding the filing of its certificate of limited partnership by the Secretary of State.

(g) The filing of a certificate of limited partnership by any domestic limited partnership shall not authorize the use in this State of the limited partnership name in violation of the rights of any third party under the federal Trademark Act, the Trademark Act of this State, or the common law; and the filing of such certificate shall not be a defense to an action for violation of any such rights. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Domestic limited partnerships may not operate under assumed names in North Carolina. See Opinion of Attorney General to Mr. Clyde Smith, Deputy Secretary of State, — N.C.A.G. — (June 25, 1987).

§ 59-105. Registered office and registered agent.

(a) Each limited partnership shall have and continuously maintain in this State:

(1) A registered office, which may be, but need not be, its place of business;

(2) A registered agent, which agent may be either an individual resident of this State whose business office is identical with such registered office, or, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

(b) Limited partnerships formed prior to October 1, 1986, shall file a certificate of limited partnership with the Office of the Secre-

tary of State pursuant to G.S. 59-201(a) designating the address of the registered office of the limited partnership and the identity of the registered agent at such address.

(c) Whenever a limited partnership shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such limited partnership upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the limited partnership department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the limited partnership at its registered office. Any such limited partnership so served shall be in court for all purposes from and after the date of such service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 2.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, designated the first paragraph, with its subdivisions (1) and (2), as subsection (a), and added subsections (b) through (e).

§ 59-106. Records to be kept.

(a) Each limited partnership shall keep in this State at its registered office:

(1) A current list of the full name and last known mailing address of each partner set forth in alphabetical order;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, State and local income tax returns and reports, if any, for the three most recent years;

(4) Copies of any then effective written partnership agreements and copies of any financial statements of the limited partnership for the three most recent years; and

(5) Unless contained in a written partnership agreement:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) Any right of a partner to receive distribution of property, including cash from the limited partnership; and

(iv) Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) The books and records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-107. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-108. Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to G.S. 59-804 and other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 2. Formation; Certificate of Limited Partnership.

§ 59-201. Certificate of limited partnership.

(a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The address, including county and city or town, and street and number, if any, of the registered office and the name of the registered agent at such address for service of process required to be maintained by G.S. 59-105;

(3) The latest date upon which the limited partnership is to dissolve; and

(4) The name and the address, including county and city or town, and street and number, if any, of each general partner.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) Domestic limited partnership filings filed prior to October 1, 1986, with the Office of Register of Deeds pursuant to G.S. 59-2(a)(2) shall evidence the existence of limited partnerships formed prior to October 1, 1986, and shall be public notice of only those matters contained in G.S. 59-201(a) and shall be used for no other purpose. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 3.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

Section 59-2, referred to in this section, was repealed by Session Laws 1985 (Regular Session, 1986), c. 989, s. 2. See now § 59-101 et seq.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added subsection (c).

§ 59-202. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

(1) The name of the limited partnership;

(2) The date of filing of the certificate; and

(3) The amendment to the certificate.

(b) Within 30 days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) The admission of a new general partner;

(2) The withdrawal of a general partner; or

(3) The continuation of the business under G.S. 59-801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) Repealed by Session Laws 1987, c. 531, s. 4, effective July 1, 1987. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 4.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, deleted subsection (d), which read "A certificate of limited partnership may be amended at any time for any other proper purpose the partners may determine."

§ 59-203. Cancellation of certificate.

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date (which shall be a date certain not more than 20 days from the date of filing) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-204. Execution of certificates.

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by all general partners and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

CASE NOTES

Failure of Partner to Sign Amendment. — Amendment to partnership agreement was invalid under former § 59-25(a)(2) where the amendment was neither signed nor sworn to by one co-general partner, as he was a "member" for purposes of former § 59-25. Wagner v. R, J & S Assocs., — N.C. App. —, 353 S.E.2d 234 (1987).

§ 59-205. Amendment or cancellation by judicial act.

If a person required by G.S. 59-204 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-206. Filing in office of Secretary of State.

(a) Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

(1) There shall be an original executed document and also one conformed copy.

(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper fees have been tendered, endorse upon the original the word "filed" and the hour, day, month and year of the filing thereof and shall file the same in his office. The Secretary of State shall thereupon immediately compare the copy with the original

and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the limited partnership or its representatives.

(3) The copy certificate as aforesaid, shall, within 60 days after the receipt by the limited partnership or its representative be delivered to the register of deeds of the county wherein the limited partnership has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed as is customary for partnerships. Promptly after the recordation, the register of deeds shall note the fact of recordation on the said copy and return it to the limited partnership or its representatives.

(b) Any such document required to be filed shall be completely effective when endorsed by the Secretary of State as provided in subsection (a)(2) above and the transaction to be effectuated thereby shall thereupon be deemed to be completely consummated as if all the required recording had been perfected, provided, however, that in lieu of the time of such endorsement by the Secretary of State, such document may fix an hour, day, month and year not more than 20 days subsequent to the endorsement of the Secretary of State and the transaction shall be deemed to be completely consummated at the time fixed by such document as if all the required recording had been perfected.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office, or if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 5.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, deleted "taxes and" preceding "fees have been tendered" in the second sentence of subdivision (a)(2).

§ 59-207. Liability for false statement in certificate.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under G.S. 59-205. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-208. Notice.

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 3. Limited Partners.

§ 59-301. Admission of additional limited partners.

After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-302. Voting.

Subject to G.S. 59-303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-303. Liability to third parties.

(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;

(2) Consulting with and advising a general partner with respect to the business of the limited partnership;
(3) Acting as surety for the limited partnership;
(4) Proposing, approving or disapproving an amendment to the partnership agreement;
(5) Proposing or voting on one or more of the following matters:
(i) The dissolution and winding up of the limited partnership;
(ii) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;
(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;
(iv) A change in the nature of the business; or
(v) The addition, removal or substitution of general partners;
(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;
(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or
(8) Requesting or attending a meeting of partners.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-304. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:
(1) Causes an appropriate certificate of limited partnership to be executed and filed; or
(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation,

but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-305. Information.

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 4. General Partners.

§ 59-401. Admission of additional general partners.

Unless otherwise provided in the partnership agreement, after the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-402. Events of withdrawal.

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in G.S. 59-602;

(2) The general partner ceases to be a member of the limited partnership as provided in G.S. 59-702;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

(5) Unless otherwise provided in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person,
(i) His death; or
(ii) The entry or an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-403. General powers and liabilities.

(a) Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

(b) Except as provided in this Article, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 6.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, designated the first paragraph as subsection (a), and added subsection (b).

§ 59-404. Contributions by a general partner.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-405. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 5. Finance.

§ 59-501. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-502. Liability for contributions.

(a) Except as provided in the agreement of limited partnership, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this Article may be compromised only by consent of all the partners. Any such compromise, however, shall not affect the rights of a creditor whose claim arose prior to the date of the compromise.

(c) No promise by a limited partner to contribute to the limited partnership is enforceable unless in a writing signed by the limited partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-503. Sharing income, gain, loss, deduction or credit.

Allocation of the income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 6. Distribution and Withdrawal.

§ 59-601. Interim distributions.

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-602. Withdrawal of general partner.

After filing of the original certificate of limited partnership a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, and damages for breach of the partnership agreement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-603. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the partnership agreement does not specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-604. Distribution upon withdrawal.

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-605. Distribution in kind.

Except as provided in writing in the limited partnership agreement, (1) a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash; and (2) a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-606. Right to distribution.

Subject to the provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-607. Limitations on distribution.

A partner shall not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-608. Liability upon return of contribution.

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this Article, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this Article, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value of his contribution which has not been distributed to him. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 7. Assignment of Partnership Interest.

§ 59-701. Nature of partnership interest.

A partnership interest is personal property. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-702. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general partner ceases to be a general partner upon assignment of all his partnership interest. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 7.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, inserted "Subject to G.S. 59-801(3)" at the beginning of the second sentence.

§ 59-703. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. The general partners shall have no liability to a partner for payments to a judgment creditor pursuant to this provision. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This Article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-704. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Part 6 of this Article. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the partnership agreement.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under G.S. 59-207, 59-502, and 59-608. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-705. Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 8. Dissolution.

§ 59-801. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all remaining partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-802. Judicial dissolution.

On application by or for a partner the court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-803. Winding up.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-804. Distribution of assets.

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including limited partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under G.S. 59-601 or G.S. 59-604;

(2) To general partners who are creditors to the extent otherwise permitted by law, in satisfaction of liabilities of the

limited partnership other than liabilities for distributions to partners under G.S. 59-601 or G.S. 59-604;

(3) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under G.S. 59-601 or G.S. 59-604; and

(4) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 9. Foreign Limited Partnerships.

§ 59-901. Law governing.

Subject to the Constitution of this State, (1) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-902. Registration.

(a) Before transacting business in this State, a foreign limited partnership shall procure a certificate of authority to transact business in this State from the Secretary of State. No foreign limited partnership shall be entitled to transact in this State any business which a limited partnership organized under this Article is not permitted to transact. In order to register, a foreign limited partnership shall deliver to the Secretary of State an original and one conformed copy of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;

(2) The jurisdiction and date of its formation;

(3) The date of formation and the period of duration;

(4) The address, including county and city or town, and street and number, if any, of the principal office of the foreign limited partnership in the jurisdiction under the laws of which it is formed;

(5) The address, including county and city or town, and street and number, if any, of the proposed registered office of the foreign limited partnership in this State, and the name of its proposed registered agent in this State at such address; the agent must be an individual resident of this State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in this State;

(6) If the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required

to include the names and addresses of the partners, a list of the names and addresses or, at the election of the foreign limited partnership, a list of the names and addresses of the general partners and the address, including county and city or town, and street and number, of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep such records until such foreign limited partnership's registration in this State is cancelled;

(7) A statement that in consideration of the issuance of a certificate of authority to transact business in this State, the foreign limited partnership appoints the Secretary of State of North Carolina as the agent to receive service of process, notice, or demand, whenever the foreign limited partnership fails to appoint or maintain a registered agent in this State or whenever any such registered agent cannot with reasonable diligence be found at the registered office;

(8) The names and addresses including county and city or town, and street and number, if any, of all of the general partners;

(9) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

(b) Without excluding other activities which may not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

(c) Whenever a foreign limited partnership shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such foreign limited partnership upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the limited partnership department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the foreign limited partnership at its registered office. Any such foreign limited partnership so served shall be in court for all purposes from and after the date of such service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process notice or demand required or permitted by law to be served upon a foreign limited partnership in any other manner now or hereafter permitted by law. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 8.1.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added subsections (c), (d) and (e).

OPINIONS OF ATTORNEY GENERAL

Assumed Name. — There is no authority for allowing a foreign limited partnership to operate under any more than one assumed name, and the assumed name under which it operates must be the one registered with the Secretary of State. See opinion of Attorney General to Mr. Clyde Smith, Deputy Secretary of State, — N.C.A.G. — (June 25, 1987).

§ 59-903. Issuance of registration.

(a) If the Secretary of State finds that an application conforms to law he shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word "filed", and the hour, day, month and year of the filing thereof;

(2) File in his office the application;

(3) Issue a certificate of authority to transact business in this State to which he shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 8.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, deleted "taxes and" preceding "fees have been tendered" in the introductory language of subsection (a).

§ 59-904. Name.

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-905. Changes and amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State an original and one conformed copy of a certificate, signed by a general partner, correcting such statement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-906. Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this State. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-907. Transaction of business without registration.

(a) No foreign limited partnership transacting business in this State without permission obtained through a certificate of authority under this Article shall be permitted to maintain any action or proceeding in any court of this State unless such foreign limited partnership shall have obtained a certificate of authority prior to trial.

(b) The failure of a foreign limited partnership to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract act of the foreign limited partnership and shall not prevent the foreign limited partnership from defending any action or proceeding in any court of this State.

(c) A foreign limited partnership failing to obtain permission to transact business in this State as required by this Article or by prior statutes then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without such permission in an amount equal to all fees and taxes which would have been imposed by law upon such foreign limited partnership had it duly applied for and received such permission plus interest and all penalties imposed by law for failure to

pay such fees and taxes, plus five hundred dollars ($500.00) and costs. The Attorney General shall bring actions to recover all amounts due the State under the provisions of this section.

(d) The Secretary of State is hereby directed to require that every foreign limited partnership transacting business in this State comply with the provisions of this Article. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this Article and for making such investigations as shall be necessary to ascertain foreign limited partnerships now transacting business in this State which may have failed to comply with the provisions of this Article.

(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this State without registration.

(f) A foreign limited partnership, by transacting business in this State without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this State. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-908. Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 10. Derivative Actions.

§ 59-1001. Right of action.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-1002. Proper plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1003. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1004. Expenses.

(a) If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of any action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

(b) In any such action, the court, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in defense of the action. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1005. Dismissal of action.

Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interest of the partners or of the creditors of the partnership will be substantially affected by such discontinuance, dismissal, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such partners or creditors whose interest it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall be awarded as costs of the action. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1006. Construction.

The provisions of this Article shall not be construed to deprive a partner of whatever rights of action he may possess in his individual capacity. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Part 11. Miscellaneous.

§ 59-1101. Construction and application.

This Article shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

Editor's Note. — Section 3 of Session Laws 1985 (Reg. Sess., 1986), makes this Article effective October 1, 1986.

§ 59-1102. Rules for cases not provided for in this Article.

In any case not provided for in this Article the provisions of Article 2 of this Chapter govern. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1103. Severability.

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1104. Effective date and repeal.

(a) Except as set forth below, the effective date of this Article is October 1, 1986, and Article 1 of Chapter 59 of the North Carolina General Statutes is hereby repealed subject to the following:

(1) G.S. 59-501, 59-502, and 59-608 shall apply only to contributions and distributions made after the effective date;

(2) G.S. 59-704 applies only to assignments made after the effective date;

(3) G.S. 59-804 shall not be construed so as to change the priority of creditors for transactions entered into prior to the effective date;

(4) Unless agreed otherwise by the partners, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of G.S. 59-503), distribution to a withdrawing partner (rather than the provisions of G.S. 59-604), and the distribution of assets upon the winding up of a limited partnership (rather than the provisions of G.S. 59-804) shall govern limited partnerships formed before the effective date of this Article herein.[;]

(5) The repeal of any prior statutory provision by this Article shall not impair, or otherwise affect, the organization or continued existence of a limited partnership existing at the effective date of this Article, nor shall the repeal by this Article of any such prior provision be construed so as to impair any contract or to affect any right accrued prior to the effective date of this Article; but such limited partnerships shall be subject to the procedural and other requirements of this Article except as otherwise specified in G.S. 59-1104(a). Provided, that failure to comply with the requirements of this Article by such limited partnerships shall not cause loss of limited liability.

(b) Any foreign limited partnership formed under the laws of another jurisdiction doing business in this State prior to the effective date shall within two years thereafter comply with Part 9 of Article 5 of Chapter 59. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, ss. 9, 10.)

Cross References. — For provisions of Chapter 59, Article 1, the Uniform Limited Partnership Act, repealed by this section, see the main volume and the Editor's Note in this supplement under the repeal line to §§ 59-1 to 59-30.1.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, substituted "assignments" for "admissions" in subdivision (a)(2), added the language beginning "but such limited partnerships shall be subject to" at the end of the first sentence of subdivision (a)(5), and added the second sentence of subdivision (a)(5).

§ 59-1105. Forms.

The Department of the Secretary of State shall prescribe forms to be used for all filings required to be made with the Office of the Secretary of State pursuant to this Article and shall furnish copies of such forms upon request. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-1106. Fees.

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2) For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3) For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4) For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5) For filing a transfer of name (G.S. 59-104(d))	10.00
(6) For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
For the first page thereof	1.00
For each additional page	.40
For affixing his certificate and official seal thereto	2.00
(8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership	
For each page	.20
(9) For filing any other document not herein specifically provided for	$10.00.

(1985 (Reg. Sess., 1986), c. 989, s. 2.)

Chapter 61.

Religious Societies.

Sec.
61-1. Trustees may be appointed and removed.

§ 61-1. Trustees may be appointed and removed.

(a) The conference, synod, convention or other ecclesiastical body representing any church or religious denomination within the State, as also the religious societies and congregations within the State, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise.

(b) A person serving as a trustee appointed pursuant to subsection (a) of this section or a director or officer of a religious society shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

(1) Is compensated for his services beyond reimbursement for expenses,
(2) Was not acting within the scope of his official duties,
(3) Was not acting in good faith,
(4) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury,
(5) Derived an improper personal financial benefit from the transaction,
(6) Incurred the liability from the operation of a motor vehicle, or
(7) Is sued in an action that would qualify as a derivative action if the organization were a for-profit corporation or as a member's or director's derivative action under G.S. 55A-28.1 or G.S. 55A-28.2 if the organization were a nonprofit corporation.

The immunity in this subsection is personal to the officers, directors, and trustees and does not immunize the organization for the acts or omissions of the officers, directors, or trustees. (1796, c. 457, ss. 1, 2; 1844, c. 47; 1848, c. 76; R.C., c. 97; Code, ss. 3667, 3668; Rev., ss. 2670, 2671; C.S., s. 3568; 1987, c. 799, s. 1.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable only to causes of action arising on or after that date, designated the existing language as subsection (a) and added subsection (b).

§ 61-2. Trustees may hold property.

CASE NOTES

A church is not required to be incorporated to be able to hold property; therefore, revocation of the corporate charter of the United Church of God was irrelevant to determining whether the United Church of God, Inc., had the right to control the property of its alleged local affiliate, St. Luke United Church of God of America. United Church of God, Inc. v. McLendon, 81 N.C. App. 495, 344 S.E.2d 373 (1986).

§ 61-3. Title to lands vested in trustees, or in societies.

CASE NOTES

Cited in African Methodist Episcopal Zion Church v. Union Chapel A.M.E. Zion Church, 64 N.C. App. 391, 308 S.E.2d 73 (1983).

Chapter 62.

Public Utilities.

Article 1.

General Provisions.

Sec.

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62-3. Definitions.

Article 2.

Organization of Utilities Commission.

62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.
62-15. Office of executive director; public staff, structure and function.
62-18. Records of receipts and disbursements; payment into treasury.

Article 3.

Powers and Duties of Utilities Commission.

62-32. Supervisory powers; rates and service.
62-36. Reports by utilities; canceling certificates for failure to file.
62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.
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Article 4.

Procedure before the Commission.

62-75. Burden of proof.

Article 5.

Review and Enforcement of Orders.

62-90. Right of appeal; filing of exceptions.
62-91. Appeal docketed; title on appeal; priorities on appeal.
62-92. Parties on appeal.
62-95. Relief pending review on appeal.
62-96. Appeal to Supreme Court.

Article 6.

The Utility Franchise.

Sec.

62-110. Certificate of convenience and necessity.
62-110.3. Bond required for water and sewer companies.
62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.
62-112. Effective date, suspension and revocation of franchises; dormant motor carrier franchises.
62-113. Terms and conditions of franchises.
62-118. Abandonment and reduction of service.

Article 7.

Rates of Public Utilities.

62-130. Commision to make rates for public utilities.
62-133. How rates fixed.
62-133.2. (Repealed effective July 1, 1989) Fuel charge adjustments for electric utilities.
62-134. Change of rates; notice; suspension and investigation.
62-140. Discrimination prohibited.
62-141. Long and short hauls.
62-146. Rates and service of motor common carriers of property.
62-146.1. Rates and service of bus companies.

Article 9.

Acquisition and Condemnation of Property.

62-190. Right of eminent domain conferred upon pipeline companies; other rights.

Article 11.

Railroads.

62-238.1. Ordinances regulating train speeds in municipalities filed with the Commission.
62-239. To fix rate of speed through municipalities; procedure.

Article 12.

Motor Carriers.

Sec.
62-259. Additional declaration of policy for motor carriers.
62-259.1. Specific declaration of policy for bus companies.
62-260. Exemptions from regulations.
62-261. Additional powers and duties of Commission applicable to motor vehicles.
62-262. Applications and hearings other than for bus companies.
62-262.1. Certificates of authority for passenger operations by bus companies.
62-262.2. Discontinuance or reduction in service.
62-266. [Repealed.]
62-268. Security for protection of public; liability insurance.
62-270. Orders, notices, and service of process.
62-275. [Repealed.]
62-277. [Repealed.]
62-281. [Repealed.]

Article 12A.

Human Service Transportation.

62-289.3. Definitions.

Article 14.

Fees and Charges.

62-300. Particular fees and charges fixed; payment.

Article 1.

General Provisions.

§ 62-1. Short title.

CASE NOTES

Scope of Authority, etc. — As to the jurisdiction of the utilities commission to require rail carrier to open drainage ditches along its tracks and to keep its drainage ditches open, see State ex rel. Utilities Comm'n v. Seaboard C.L.R.R., 62 N.C. App. 631, 303 S.E.2d 549, cert. denied and appeal dismissed, 309 N.C. 324, 307 S.E.2d 168 (1983).

Cited in State ex rel. Utilities Comm'n v. Thornburg, — N.C. —, 342 S.E.2d 28 (1986).

§ 62-2. Declaration of policy.

Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end,

to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills.

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plant under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; and

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regula-

tion by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985. (1963, c. 1165, s. 1; 1975, c. 877, s. 2; 1977, c. 691, s. 1; 1983 (Reg. Sess., 1984), c. 1043, s. 1; 1985, c. 676, s. 3; 1987, c. 354.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Session Laws 1985, c. 676, s. 2 provides:

"The General Assembly finds and declares that a safe, competitive and fuel efficient passenger bus industry contributes to a strong economy and is vital to the transportation needs of the elderly, handicapped and poor; that Congress has enacted the Bus Regulatory Reform Act of 1982, the stated purpose of which is to reduce unnecessary and burdensome government regulation of motor carriers of passengers; that it is in the interest of this State to amend and modify the laws regulating motor carriers of passengers to make them more compatible with the provisions of the Bus Regulatory Reform Act of 1982 and consistent with the public needs of the citizens of this State."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective June 29, 1984, added the last paragraph.

The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings for the North Carolina Utilities Commission, added the last paragraph of this section.

The 1987 amendment, effective June 12, 1987, added subdivision (3a).

CASE NOTES

Purpose of Chapter. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

The status of an entity as a public utility, entitled to the rights conferred by statute and subject to the jurisdiction of the Commission, does not depend upon whether it has secured a certificate of public convenience and necessity, pursuant to § 62-110, but is determined instead according to whether it is, in fact, operating a business defined by the Legislature as a public utility. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

If an entity is, in fact, operating as a public utility, it is subject to the regulatory powers of the Commission, notwithstanding the fact that it has failed to comply with § 62-110 before beginning its operation. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

The Commission, not the courts, has been given the authority to regulate the rates of public utilities. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Applied in State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 309 N.C. 195, 306 S.E.2d 435 (1983).

Cited in State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

(1a) "Bus company" means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.

(2) "Certificate" means a certificate of public convenience and necessity issued by the Commission to a public utility or a

certificate of authority issued by the Commission to a bus company.

(4) "Charter operations" with regard to bus companies means the transportation of a group of persons for sightseeing purposes, pleasure tours, and other types of special operations, or the transportation of a group of persons who, pursuant to a common purpose and under a single contract, and for a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(7) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, or in charter oprations, except as exempted in G.S. 62-260.

(9a) "Fixed route" means the specific highway or highways over which a bus company is authorized to operate between fixed termini.

(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation.

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected;

3. Transporting persons or property by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or property by railways or motor vehicles, or any other form of transportation or express service for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term "public utility" shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting

a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter.

e. The term "public utility" shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term "public utility" shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term public utility shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

(1913, c. 127, s. 7; C.S., s. 1112(b); 1933, c. 134, ss. 3, 8; c. 307, s. 1; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1947, c. 1008, s. 3; 1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13; 1959, c. 639, ss. 12, 13; 1963, c. 1165, s. 1; 1967, c. 1094, ss. 1, 2; 1971, c. 553; c. 634, s. 1; cc. 894, 895; 1973, c. 372, s. 1; 1975, c. 243, s. 2; cc. 254, 415; 1979, c. 652, s. 1; 1979, 2nd Sess., c. 1219, s. 1; 1981 (Reg. Sess., 1982), c. 1186, s. 2; 1985, c. 676, s. 4; 1987, c. 445, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Cross References. — For provision making small power producers as defined in subdivision (27a) of this section subject to the provisions of Part 3 of Article 21 of Chapter 143, the Dam Safety Law, even though certified by the North Carolina Utilities Commission, see § 143-215.25(2)d.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, inserted subdivision (1a), defining "Bus company," rewrote subdivision (2), defining "Certificate," rewrote subdivision (4), which formerly defined "Charter party," inserted "or in charter operations" near the end of subdivision (7), and inserted subdivision (9a), defining "Fixed route."

The 1987 amendment, effective June 22, 1987, rewrote paragraph (23)g.

CASE NOTES

Subdivision (23)c Not Void for Vagueness. — A person of ordinary understanding would know from reading subdivision (23)c of this section that if a parent corporation controls its wholly owned public utility in such a way that the rates of the utility are affected this has an effect on the rates and the parent corporation could be found to be a public utility. This prevents this section from being void for vagueness under the due process clause of U.S. Const., Amend. XIV. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Nor Does It Contain Unconstitutional Delegation of Legislative Authority. — The General Assembly has given the Commission sufficient guidelines in subdivision (23)c of this section so that if the facts are properly found by the Commission, it does not make policy but carries out legislative policy. Therefore, subdivision (23)c does not delegate legislative authority in violation of N.C. Const., Art. I, § 6. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

A common carrier generally is not authorized to act as a contract carrier. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

A common carrier must charge all customers uniform rates for the same kind and degree of services; contract carriers, by contrast, are not subject to this requirement. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

A "certificate" authorizes performance as a common carrier, while a "permit" authorizes performance as a contract carrier. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

Whether Party Operating As Common Carrier Question of Law. — Whether under the undisputed facts a party is operating as a common carrier is a question of law for the court. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

The "crucial test" in determining whether an entity is operating as a common carrier is whether it is holding itself out as such. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

A contract carrier is not authorized to act as a common carrier; it may not offer its services to the general public. Indeed, it may serve at most a very limited number of shippers, and then only under a private individual contract with each shipper to be served. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

Legislative Intent as to Water Systems. — By excluding from its definition of public utility those water systems serving fewer than 10 customers, the General Assembly manifested its clear intent that systems serving 10 or more customers serve a sufficient segment of the public to create a public interest in their regulation, so as to make certain that adequate service is provided at fair rates. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Provision of Water and Sewage Service "To or for the Public". — Individual who, at the time of hearing, was selling water to 18 customers and providing sewage disposal service to 19 customers, was providing water and sewage disposal service "to or for the public", where, since her acquisition of the water distribution and sewage disposal facilities, she had provided services to any resident of a house connected thereto who desired the services, and where although she had solicited no customers and had not extended her facilities to any residences not previously served, she had willingly provided service to new customers who moved into homes already connected to her facilities. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Applied in State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397 (1985); State ex rel. Utilities Comm'n v. Edmisten, 314 N.C. 122, 333 S.E.2d 453 (1985).

Cited in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

OPINIONS OF ATTORNEY GENERAL

"Person" Includes Municipalities and Counties. — Municipalities and counties — bodies politic and corporate — are included in the definition of "person" under § 62-3(21). See opinion of Attorney General to Mr. Robert H. Bennink, Jr., General Counsel and Hearing Examiner, North Carolina Utilities Commission, 55 N.C.A.G. 18 (1985).

Western Carolina University (WCU) is not a public utility subject to supervision by the Commission, except that, pursuant to § 116-35, sales to the public of excess power must be "at a rate or rates approved by the Utilities Commission." See opinion of Attorney General to Mr. Myron L. Coulter, Chancellor, Western Carolina University, 55 N.C.A.G. 55 (1985).

Article 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as chairman shall receive one thousand dollars ($1,000) additional per annum. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added the last two sentences of subsection (h).

§ 62-15. Office of executive director; public staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term

shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(1949, c. 1009, s. 3; 1963, c. 1165, s. 1; 1977, c. 468, s. 4; 1981, c. 475; 1983, c. 717, s. 12.1; 1985, c. 499, s. 4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. —

The 1983 amendment, effective July 11, 1983, substituted "after consultation with the Utility Review Committee of the General Assembly" for "concurred in by a majority of the Utility Review Committee of the General Assembly" at the end of the fifth sentence of subsection (a).

The 1985 amendment, effective June 28, 1985, inserted "Joint Legislative" preceding "Utility Review Committee" in the fifth sentence of subsection (a).

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982); State ex rel. Utilities Comm'n v. Seaboard C.L.R.R., 62 N.C. App. 631, 303 S.E.2d 549 (1983).

Stated in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982).

§ 62-18. Records of receipts and disbursements; payment into treasury.

(b) Except as provided in G.S. 62-110.3, all license fees and seal taxes, all money received from fines and penalties, and all other fees paid into the office of the Utilities Commission shall be turned in to the State treasury. (1899, c. 164, ss. 26, 33, 34; Rev., ss. 1114, 1115; C.S., ss. 1063, 1064; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1987, c. 490, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 783, s. 9 rewrote Session Laws 1987, c. 490, s. 3 to read: "This act applies to all applications for franchises filed on or after October 1, 1987."

Effect of Amendments. — The 1987 amendment, applicable to all applications for franchises filed on or after October 1, 1987, inserted "Except as provided in G.S. 62-110.3" at the beginning of subsection (b).

§ 62-20. Participation by Attorney General in Commission proceedings.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

Article 3.

Powers and Duties of Utilities Commission.

§ 62-30. General powers of Commission.

CASE NOTES

Commission Has No Authority Other Than Granted by Legislature. — The Utilities Commission was created by the General Assembly. In fixing rates to be charged by utilities, it exercises a legislative function and has no authority other than that given to it by the legislature. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

General Power and Authority. — Through this section and § 62-32 the legislature has granted the Utilities Commission such general power and authority to supervise and control public utilities of the State as may be necessary. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

Under § 62-42(a)(5) the Commission has the authority to order the utility to take action necessary to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

If the Commission may refuse to accept the uncontradicted evidence presented to it by a utility, it most certainly may reject the utility's evidence in favor of evidence presented by other witnesses. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

The Commission, not the courts, is authorized by the legislature to determine what is a fair rate of return. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

In reviewing the Commission's determination of fair rate of return, the court will only review the record and evidence to determine if the Commission's order is supported by competent evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

Yellow page revenue and expenses should be included in the revenues and expenses of the company when it applies for a rate increase. This is clearly the majority rule. State ex rel. Utilities Comm'n v. Central Tel. Co., 307 N.C. App. 541, 299 S.E.2d 264 (1983).

Telephone utility enjoys a great advantage over all competitors in the field of directory advertising. In addition, this preferred position with all its benefits and revenues is directly related to and a result of the company's public utility function. Therefore, the Utilities Commission does have the authority to include the expenses, revenues and investments related to directory advertising in its ratemaking proceedings. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

As to the piercing of the corporate veil between corporation and its wholly-owned public utility subsidiary to establish refund obligation, see State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

Propriety of Order Requiring Con-

tinued Operation of Utilities. — An order of the Commission, based upon proper findings and conclusions, requiring appellant to continue operation of her utilities would not violate constitutional prohibitions against involuntary servitude. Appellant voluntarily put her land and equipment to a public use and collected compensation for the services which she provided, and having done so, the Commission could require that she continue to use them in the service to which she voluntarily dedicated them, so long as she was justly compensated for such service. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Applied in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982).

§ 62-32. Supervisory powers; rates and service.

(b) Except as provided in this Chapter for bus companies, the Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service. (1913, c. 127, s. 7; C.S., s. 1112(b); 1933, c. 134, s. 3; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1959, c. 639, s. 12; 1963, c. 1165, s. 1; 1985, c. 676, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, inserted "Except as provided in this Chapter for bus companies" at the beginning of subsection (b).

CASE NOTES

Authority of Commission, etc. — Through § 62-30 and this section the legislature has granted the Utilities Commission such general power and authority to supervise and control public utilities of the State as may be necessary. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

Under § 62-42(a)(5) the Commission has the authority to order the utility to take action necessary to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

If the Commission may refuse to accept the uncontradicted evidence presented to it by a utility, it most certainly may reject the utility's evidence in favor of evidence presented by other witnesses. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

The Utilities Commission is the administrative agency charged with the duty of regulating the intrastate retail rates of public utilities within this State. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

The Commission, not the courts, is authorized by the legislature to determine what is a fair rate of return. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

In reviewing the Commission's determination of fair rate of return, the court will only review the record and evidence to determine if the Commission's order is supported by competent evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

Yellow page revenue and expenses should be included in the revenues and expenses of the company when

it applies for a rate increase. This is clearly the majority rule. State ex rel. Utilities Comm'n v. Central Tel. Co., 60 N.C. App. 393, 299 S.E.2d 264 (1983).

Classified Directory Advertising Revenues. — In making judgment that telephone company's classified directory was an essential aspect of telephone service generally Commission was clearly acting within its authority under § 62-30 and this section, and the Commission correctly concluded that the classified directory advertising revenues should continue to be accounted for in establishing just and reasonable rates for the company in this State. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982), modified, 307 N.C. 541, 299 S.E.2d 763 (1983).

Telephone utility enjoys a great advantage over all competitors in the field of directory advertising. In addition, this preferred position with all its benefits and revenues is directly related to and a result of the company's public utility function. Therefore, the Utilities Commission does have the authority to include the expenses, revenues and investments related to directory advertising in its ratemaking proceedings. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

Propriety of Order Requiring Continued Operation of Utilities. — An order of the Commission, based upon proper findings and conclusions, requiring appellant to continue operation of her utilities would not violate constitutional prohibitions against involuntary servitude. Appellant voluntarily put her land and equipment to a public use and collected compensation for the services which she provided, and having done so, the Commission may require that she continue to use it in the service to which she voluntarily dedicated it so long as she is justly compensated for such service. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

When the Utilities Commission found that natural gas corporation had received payments in lieu of what it would have received under a service contract and that the customers of the company were bearing the company's contract costs, it was within the power of the Commission under subsection (b) of this section and G.S. 62-130(a) and (d) to take these payments into account in setting a reasonable rate. State ex rel. Utilities Comm'n v. North Carolina Natural Gas Corp., 76 N.C. App. 330, 332 S.E.2d 755, cert. denied, 314 N.C. 675, 336 S.E.2d 405 (1985).

§ 62-36. Reports by utilities; canceling certificates for failure to file.

The Commission may require any public utility to file annual reports in such form and of such content as the Commission may require and special reports concerning any matter about which the Commission is authorized to inquire or to keep informed, or which it is required to enforce. All reports shall be under oath when required by the Commission. The Commission may issue an order, without notice or hearing, canceling or suspending any certificate of convenience and necessity or any certificate of authority 30 days after the date of service of the order for failing to file the required annual report at the time it was due. In the event the report is filed during the 30-day period, the order of cancellation or suspension shall be null and void. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 15; 1941, c. 97; 1959, c. 639, ss. 7, 8; 1963, c. 1165, s. 1; 1985, c. 676, s. 6.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North

Carolina Utilities Commission, inserted "or any certificate of authority" in the third sentence.

§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.

(a) Except as otherwise limited in this Chapter, whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:

(1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or

(2) That persons are not served who may reasonably be served, or

(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonably to be made, or

(4) That it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees and the public, or

(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity,

the Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or affected within a reasonable time prescribed in the order. This section shall not apply to terminal or terminal facilities of motor carriers of property.

(1933, c. 307, s. 10; 1949, c. 1029, s. 2; 1963, c. 1165, s. 1; 1965, c. 287, s. 6; 1985, c. 676, s. 7.)

Only Part of Section Set Out. — As the rest of the section is not affected, it is not set out.

Editor's Note. — Subsection (a) of this section is set out above to correct an error in punctuation and capitalization in the subsection as set out in the Replacement Volume.

Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, inserted "Except as otherwise limited in this Chapter" at the beginning of the introductory language of subsection (a).

CASE NOTES

Power and Duties of Commission.—

Under subdivision (a)(5) of this section the Commission has the authority to order the utility to take action necessary to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

As to the jurisdiction of the Utilities Commission to require rail carrier to open drainage ditches along its tracks

and to keep its drainage ditches open, see State ex rel. Utilities Comm'n v. Seaboard C.L.R.R., 62 N.C. App. 631, 303 S.E.2d 549, cert. denied and appeal dismissed, 309 N.C. 324, 307 S.E.2d 168 (1983).

The Commission, not the courts, is authorized by the legislature to determine what is a fair rate of return. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

In reviewing the Commission's determination of fair rate of return, the court will only review the record and evidence to determine if the Commission's order is supported by competent evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983).

Quoted in State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397 (1985).

§ 62-48. Appearance before courts and agencies.

(a) The Commission is authorized and empowered to initiate or appear in such proceedings before federal and State courts and agencies as in its opinion may be necessary to secure for the users of public utility service in this State just and reasonable rates and service; provided, however, that the Commission shall not appear in any State appellate court in support of any order or decision of the Commission entered in a proceeding in which a public utility had the burden of proof.

(b) The Commission may, when appearing before federal courts and agencies on behalf of the using and consuming public in matters relating to the wholesale rates and supply of natural gas, employ, subject to the approval of the Governor, private legal counsel and be reimbursed for any resulting legal fees and costs from past and future refunds received by the North Carolina natural gas distribution companies, and may establish procedures for those natural gas distribution companies to set aside reasonable amounts of those refunds for this purpose. The Commission is also authorized to establish procedures whereby the State may be reimbursed from past and future refunds received by the North Carolina natural gas distribution companies for travel expenses incurred by staff members of the Commission and Public Staff designated to provide assistance to the Commission's private legal counsel in natural gas matters before federal courts and agencies. (1899, c. 164, s. 14; Rev., s. 1110; 1907, c. 469, s. 5; C.S., s. 1075; 1929, c. 235; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1977, c. 468, s. 11; 1985, c. 312, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 233.)

Editor's Note. — Session Laws 1985, c. 312, s. 3 makes the act effective upon ratification and provides that its provisions shall apply to legal fees and costs previously incurred for the purposes stated in section 1 of the act (which made the substantive amendments to § 62-48). The act was ratified June 3, 1985.

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Effect of Amendments. — The 1985 amendment, effective June 3, 1985, designated the first paragraph of this section as subsection (a) and added subsection (b).

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, added the last sentence of subsection (b).

Article 4.

Procedure before the Commission.

§ 62-60.1. Commission to sit in panels of three.

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

§ 62-72. Commission may make rules of practice and procedure.

CASE NOTES

Power to Grant Continuance or Extend Hearing. — The Commission may regulate its own procedure within broad limits and that it may suspend or waive its rules. Thus, the commission has the power, within its discretion, to grant a continuance or extend a hearing. State ex rel. Utilities Comm'n v. Conservation Council, 64 N.C. App. 266, 307 S.E.2d 375 (1983), modified on other grounds, 66 N.C. App. 456, 311 S.E.2d 617, rev'd in part, 312 N.C. 59, 320 S.E.2d 679 (1984).

§ 62-73. Complaints against public utilities.

CASE NOTES

The Utilities Commission was without jurisdiction to require VEPCO to comply with regulations of the Roanoke Voyages Corridor Commission, or to effect and encourage restoration, preservation, and enhancement of the appearance and aesthetic quality of the U.S. Highway 64 and 264 travel corridor through Roanoke Island, to bear the additional expense of supplying electrical service through underground facilities. The Corridor Commission did not argue or allege inadequate service or unreasonable rates, so the complaint was properly dismissed. State ex rel. Utilities Comm'n v. Roanoke Voyages Corridor Comm'n, 76 N.C. App. 324, 332 S.E.2d 753 (1985).

Applied in State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

§ 62-75. Burden of proof.

Except as otherwise limited in this Chapter, in all proceedings instituted by the Commission for the purpose of investigating any rate, service, classification, rule, regulation or practice, the burden of proof shall be upon the public utility whose rate, service, classification, rule, regulation or practice is under investigation to show that the same is just and reasonable. In all other proceedings the burden of proof shall be upon the complainant. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1985, c. 676, s. 8.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, inserted "Except as otherwise limited in this Chapter" at the beginning of this section.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982).

Cited in State ex rel. Utilities Comm'n v. Central Tel. Co., 60 N.C. App. 393, 299 S.E.2d 264 (1983).

§ 62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.

CASE NOTES

Power to Alter or Amend Orders. — Whatever the effect of subsection (c) of this section on an order filed by a panel of three Commissioners, this does not affect the power of the Utilities Commission to act pursuant to § 62-80. Section 62-80 provides the Utilities Commission may "alter or amend" an order after a hearing. By using the words "alter or amend" the legislature intended that the Commission may change an order in some respects without considering all factors that must be considered in a general rate case. The statute does not limit changes in orders to those that have not become final. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

§ 62-79. Final orders and decisions; findings; service; compliance.

CASE NOTES

The Commission is required, etc. — Subsection (a) of this section requires the Commission to find all facts which are essential to a determination of the issues before it, in order that the reviewing court may have sufficient information to determine whether an adequate basis exists, in law and in fact, to support the Commission's resolution of the controverted issues. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

The purpose of the findings required by subsection (a) is to provide the reviewing court with sufficient information to allow it to determine the controverted questions presented in the proceedings. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Commission Need Not Comment on Every Fact Presented. — Although the Utilities Commission must consider and determine controverted questions by making findings of fact and conclusions of law, and must set forth the reasons and bases therefor "upon all the material issues of fact, law, or discretion," it need not comment upon every single fact or item of evidence presented by the parties. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

Failure to include all necessary findings of fact is an error of law and a basis for remand under § 62-94(b)(4) because it frustrates appellate review. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n., — N.C. —, 328 S.E.2d 264 (1985).

Quoted in State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

Cited in State ex rel. Utilities Comm'n v. Conservation Council, 64 N.C. App. 266, 307 S.E.2d 375 (1983).

§ 62-80. Powers of Commission to rescind, alter or amend prior order or decision.

CASE NOTES

General Rate Hearing Not Required for Amendment. — This section requires that the procedures of complaint hearings shall be used before amending an order but it does not require a general rate hearing before an order may be amended. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

Effect of § 62-78(c) on Power to Alter or Amend. — Whatever the effect of § 62-78(c) on an order filed by a panel of three Commissioners, this does not affect the power of the Utilities Commission to act pursuant to this section. This section provides that the Utilities Commission may "alter or amend" an order after a hearing. By using the words "alter or amend" the legislature intended that the Commission may change an order in some respects without considering all factors that must be considered in a general rate case. The statute does not limit changes in orders to those that have not become final. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

Article 5.

Review and Enforcement of Orders.

§ 62-90. Right of appeal; filing of exceptions.

(a) Any party to a proceeding before the Commission may appeal from any final order or decision of the Commission within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, not to exceed 30 additional days, and by order made within 30 days, if the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decisions or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

All other parties may give notice of cross appeal and set out exceptions which shall set forth specifically the grounds on which the said party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission. Such notice of cross appeal and exceptions shall be filed with the Commission within 20 days after the first notice of appeal and exceptions has been filed, or within such time thereafter as may be fixed by the Commission, not to exceed 20 additional days by order made within 20 days of the first filed notice of appeal and exceptions.

(d) The appeal shall lie to the appellate division of the General

Court of Justice as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(g) Repealed by Session Laws 1983, c. 526, s. 5, effective July 1, 1983. (1949, c. 989, s. 1; 1955, c. 1207, s. 1; 1959, c. 639, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 1; 1975, c. 391, s. 12; 1983, c. 526, ss. 4, 5; c. 572.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The first 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, rewrote the first sentence of subsection (d), which read "The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29," and deleted subsection (g), which read "The Court of Appeals shall hear and determine all matters advising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals."

The second 1983 amendment, effective Oct. 1, 1983, substituted "Any party" for "No party," deleted "unless" preceding "within 30 days after the entry," inserted "not to exceed 30 additional days, and," deleted "if" preceding "the party aggrieved by such decision," and substituted "said decisions" for "said decision" in the first paragraph of subsection (a), and added the second paragraph of that subsection.

CASE NOTES

I. IN GENERAL.

Applied in State ex rel. Utilities Comm'n v. Seaboard C.L.R.R., 62 N.C. App. 631, 303 S.E.2d 549 (1983).

Cited in State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

§ 62-91. Appeal docketed; title on appeal; priorities on appeal.

Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Utilities Commission shall be entitled "State of North Carolina ex rel. Utilities Commission (here add any additional parties in support of the Commission Order and their capacity before the Commission), Appellee(s) v. (here insert name of appellant and his capacity before the Commission), Appellant." Appeals from the Utilities Commission pending in the superior courts on September 30, 1967, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 6; 1975, c. 391, s. 13; 1983, c. 526, s. 6.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, deleted the former last sentence, which read "Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure."

§ 62-92. Parties on appeal.

In any appeal to the appellate division of the General Court of Justice, the complainant in the original complaint before the Commission shall be a party to the record and each of the parties to the proceeding before the Commission shall have a right to appear and participate in said appeal. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 2; 1983, c. 526, s. 7.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, substituted "appellate division of the General Court of Justice" for "Court of Appeals."

§ 62-93. No evidence admitted on appeal; remission for further evidence.

CASE NOTES

The validity of the Commission's findings and conclusions must be determined in light of the evidence that was presented to it. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Cited in State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986).

§ 62-94. Record on appeal; extent of review.

CASE NOTES

I. IN GENERAL.

Subsection (b) States Authority of Court.

Subsection (b) gives the Supreme Court ample basis for ordering refunds to ratepayers who have been charged unlawfully high rates. Therefore, the Supreme Court is authorized to order refunds when the Commission has made an error of law in its rate-making procedures. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Limitation on Authority to Review.—

Under applicable standards of appellate review, the Court of Appeals is not at liberty to substitute its judgment for that of the Commission. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982), modified, 307 N.C. 541, 299 S.E.2d 763 (1983).

Function of Court on Review. —

The test upon appeal from a determination of the Utilities Commission is whether the Commission's findings of fact are supported by competent, material and substantial evidence in view of the entire record. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

Absence of proper findings is an error of law and basis for remand under subdivision (b)(4) of this section because it frustrates appellate review. State ex rel. Utilities Comm'n v. Conservation Council, 66 N.C. App. 456, 311 S.E.2d 617, rev'd in part, 312 N.C. 59, 320 S.E.2d 679 (1984).

The credibility of testimony and the weight to be given, etc. —

It is a well-established rule that it is for administrative body, in an adjudicatory proceeding, to determine weight and sufficiency of evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence.

State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

The credibility of testimony and the weight to be accorded it are matters to be determined by the Commission. However, a summary disposition which indicates that the Commission accorded only minimal consideration to competent evidence constitutes error at law and is correctable on appeal. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Presumption That Commission Considered All Competent Evidence. — In the absence of an express statement by the Commission to the contrary, some record evidence to the contrary, or a summary disposition which indicates to the contrary, the court would presume that the Commission gave proper consideration to all competent evidence presented. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Determination by Commission, etc.—

In accord with 3rd paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Findings supported, etc. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

In accord with 2nd paragraph in the main volume. See State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985); State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

The Commission's findings and conclusions, where supported by competent, material, and substantial evidence, considering the whole record, and taking into account any contradictory evidence or evidence from which conflicting inferences could be drawn, must be affirmed. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982), modified, 307 N.C. 541, 299 S.E.2d 763 (1983).

Even Though Reviewing Court Might Have Reached, etc. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

The authority to determine the adequacy of a utility's service and the rates to be charged lies with the Commission, and a reviewing court may not modify or reverse its determination merely because the court would have reached a different finding based on the evidence. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

Burden Is on Appellant, etc. —

In accord with 2nd paragraph in original. See State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983); State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Minimal Consideration of Competent Evidence, etc. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

When Order Will Be Affirmed. —

In accord with 2nd paragraph in main volume. See State ex rel. Utilities Comm'n v. Edmisten, 314 N.C. 122, 333 S.E.2d 453 (1985); State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Findings, inferences, conclusions or decisions of Utilities Commission which are arbitrary or capricious and which prejudice substantial rights of appellants are not binding on reviewing court. State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

Where the individualized nature of a shuttle operation precluded performance by a common carrier, the Utilities Commission erred as a matter of law in finding that performance of the shuttle contract constitutes common carriage. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

The failure to include all the necessary findings of fact is an error of law and a basis for remand under subdivision (b)(4) of this section, because it frustrates appellate review. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

Finding Held Error of Law. — Finding of the Commission that legal fees which were incurred by utility in contesting the amount of an administrative penalty imposed as a result of its failure to provide adequate water service were recoverable as part of its oper-

ating expenses, in that they were "a reasonable and necessary expenditure" which was associated with its water service to its customers, constituted an error of law under subdivision (b)(4) of this section. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

Applied in State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 309 N.C. 195, 306 S.E.2d 435 (1983).

Quoted in State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 61 N.C. App. 42, 300 S.E.2d 395 (1983); State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986); State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

Cited in State ex rel. Utilities Comm'n v. Central Tel. Co., 60 N.C. App. 493, 299 S.E.2d 264 (1983); State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983); State ex rel. Utilities Comm'n v. Conservation Council, 64 N.C. App. 266, 307 S.E.2d 375 (1983); State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

§ 62-95. Relief pending review on appeal.

Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, a judge of the appellate court with jurisdiction over the case on appeal is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 8; 1983, c. 526, s. 8.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, substituted "appellate court with jurisdiction over the case on appeal" for "Court of Appeals."

§ 62-96. Appeal to Supreme Court.

Appeals of final orders of the Utilities Commission to the Supreme Court are governed by Article 5 of General Statutes Chapter 7A. In all appeals filed in the Court of Appeals, any party may file a motion for discretionary review in the Supreme Court pursuant to G.S. 7A-31. If the Commission is the appealing party, it is not required to give any undertaking or make any deposit to assure payment of the cost of the appeal, and the court may advance the cause on its docket. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 3; 1983, c. 526, s. 9.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, rewrote this section.

Article 6.

The Utility Franchise.

§ 62-110. Certificate of convenience and necessity.

(a) Except as provided for bus companies in Article 12 of this Chapter, no public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to construction into territory contiguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business.

(b) The Commission shall be authorized to issue a certificate to any person applying to the Commission to offer long distance services as a public utility as defined in G.S. 62-3(23)a.6., provided that such person is found to be fit, capable, and financially able to render such service, and that such additional service is required to serve the public interest effectively and adequately; provided further, that in such cases the Commission shall consider the impact on the local exchange customers and only permit such additional service if the Commission finds that it will not jeopardize reasonably affordable local exchange service.

Notwithstanding any other provision of law, the terms, conditions, rates, and interconnections for long distance services offered on a competitive basis shall be regulated by the Commission in accordance with the public interest. In promulgating rules necessary to implement this provision, the Commission shall consider whether uniform or nonuniform application of such rules is consistent with the public interest. Provided further that the Commission shall consider whether the charges for the provision of interconnections should be uniform.

For purposes of this section, long distance services shall include the transmission of messages or other communications between two or more central offices wherein such central offices are not connected on July 1, 1983, by any extended area service, local measured service, or other local calling arrangement.

(c) The Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments. This service may be in addition to or in competition with public telephone services offered by the certificated telephone company in the service area. The certificated local exchange telephone company in the service area where any new pay telephone service is proposed shall be the only provider of the access line from the pay instrument to the network, and the rates approved by the Commission for this access line shall be fully compensatory, reflect the business nature of the service, and shall be set on a measured usage rate basis where facilities are available or on a message rate basis otherwise. The Commission shall promulgate rules to implement the service authorized by this section, recognizing the competitive nature of the offerings and, notwithstand-

ing any other provision of law, the Commission shall determine the extent to which such services shall be regulated and to the extent necessary to protect the public interest regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network.

(d) The Commission shall be authorized, consistent with the public interest and notwithstanding any other provision of law, to adopt procedures for the purpose of allowing shared use and/or resale of any telephone service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission); provided, however, that there shall be no "networking" of any services authorized under this section whereby two or more premises where such services are provided are connected, and provided further that the certificated local exchange telephone company shall be the only provider of access lines or trunks connecting such authorized service to the telephone network, and that the local service rates approved by the Commission for local exchange lines or trunks being shared or resold shall be fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise. Provided however, the Commission may permit or approve rates on bases other than measured or message for shared service whenever the service is offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise. The Commission shall issue rules to implement the service authorized by this section, considering the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services and the terms and conditions for interconnection to the local exchange network. The Commission shall require any person offering telephone service under this subsection by means of a Private Branch Exchange ("PBX") or key system to secure adequate local exchange trunks from the local exchange telephone company to assure a quality of service equal to the quality of service generally found acceptable by the Commission. Unless otherwise ordered by the Commission for good cause shown by the company, the right and obligation of the local exchange carrier to provide local service directly to any person located within its certificated service area shall continue to apply to premises where shared or resold telephone service is available, provided however, the Commission shall be authorized to establish the terms and conditions under which such services should be provided. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1983 (Reg. Sess., 1984), c. 1043, s. 2; 1985, c. 676, s. 9; c. 680; 1987, c. 445, s. 1.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective June 29, 1984, added present subsection (b).

Session Laws 1985, c. 676, s. 9, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, inserted "Except as provided for bus companies in Article 12 of this Chapter" at the beginning of present subsection (a).

Session Laws 1985, c. 680, effective July 10, 1985, added present subsection (c).

The 1987 amendment, effective June 22, 1987, designated the first paragraph as subsection (a), the next three paragraphs as subsection (b), and the fifth paragraph as subsection (c), and added subsection (d).

CASE NOTES

The status of an entity as a public utility, entitled to the rights conferred by statute and subject to the jurisdiction of the Commission, does not depend upon whether it has secured a certificate of public convenience and necessity, pursuant to this section, but is determined instead according to whether it is, in fact, operating a business defined by the legislature as a public utility. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

If an entity is, in fact, operating as a public utility, it is subject to the regulatory powers of the Commission, notwithstanding the fact that it has failed to comply with this section before beginning its operation. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Evidence Held to Show Convenience and Necessity of Services. — Evidence before the Commission indicating that a number of the residences served by applicant's water and sewer systems were situated on quarter-acre lots, which were of insufficient size to support both a well and septic system, and that the occupants of these residences, who were currently among appellant's customers, had no alternative means of water supply or sewage disposal other than the service provided by appellant, clearly supported the conclusion not only that appellant's services constituted a convenience to that segment of the public who used them, but also that such services were necessary to the safety and health of the public. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Commission's order that appellant apply for a certificate of public convenience and necessity was unnecessary where the Commission had already concluded that appellant's application to abandon service should be denied. Instead, in such a case the Commission should proceed to establish the territory to be served by appellant, issue the certificate (franchise), establish the rates to be charged for the services, and, if necessary, exercise its statutory powers and authority to compel compliance with its lawful orders. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Stated in Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46 (1986).

§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities.

CASE NOTES

Public convenience and necessity is based on, etc.

Subdivision (b)(1) of § 62-133 does not require the Commission to make new findings on the need for the construction. Before any public utility begins the construction of a facility for generating electricity for use by the public it must first obtain from the Commission a certificate stating that public convenience and necessity requires, or will require such construction. Before such a certificate can be granted the applicant must file an estimate of construction costs and the Commission must hold public hearings. This procedure satisfies the argument that the construction must be necessary. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

The furnishing of electric service to an area subsequently annexed must be carried out pursuant to the 1965 Electric Act. State ex rel. Utilities

Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

The 1965 Electric Act, §§ 160A-331 to 160A-338 and 62-110.1 to 62-110.2, does not empower or restrict municipalities in the operation of their electric systems outside their corporate limits. State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

OPINIONS OF ATTORNEY GENERAL

Municipalities and counties are subject to the provisions of this section which require public utilities and other persons to obtain a certificate of public convenience and necessity prior to construction of any facility for generation of electricity. See opinion of Attorney General to Mr. Robert H. Bennink, Jr., General Counsel and Hearing Examiner, North Carolina Utilities Commission, 55 N.C.A.G. 18 (1985).

§ 62-110.2. Electric service areas outside of municipalities.

Legal Periodicals. — For 1984 survey of commercial law, "Utilities — Extension of Electric Service: The Municipalities' Power Play," see 63 N.C.L. Rev. 1095 (1985).

CASE NOTES

Purpose. —

The Territorial Assignment Act of 1965, as codified at this section and §§ 160A-331 to 160A-338 (1982), represents an attempt to eliminate the uneconomic duplication of transmission and distribution systems bred of unbridled competition between public utilities, electric membership corporations and municipalities by designating the various competitors' rights. Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

A municipality is not, etc. —

In accord with original. See State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. App. 302, 302 S.E.2d 642 (1983), rev'd on other grounds, 310 N.C. 302, 311 S.E.2d 586 (1984).

Designation of Municipility as "Electrical Supplier" Is Legislative Function. — It is for the Legislature, and not the court, to define "electric supplier" further than presently set out in subdivision (a)(3) of this section, if it intends that municipalities be so designated. State ex rel. Utilities Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983), rev'd on other grounds, 310 N.C. 302, 311 S.E.2d 586 (1984).

Authority for Furnishing Service Outside Corporate Limits. — The 1965 Electric Act, appearing in §§ 160A-331 through 160A-338 and this section, does not empower or authorize municipalities to operate electric systems outside corporate limits, nor does it restrict such service. Insofar as the General Statutes are concerned, the sole authority for, and the only restriction upon municipalities furnishing electric service outside corporate limits is found in § 160A-312. Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983); State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

Applied in State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

§ 62-110.3. Bond required for water and sewer companies.

(a) No franchise may be granted to any water or sewer utility company until the applicant furnishes a bond, secured with sufficient surety as approved by the Commission, in an amount not less than ten thousand dollars ($10,000) nor more than two hundred thousand dollars ($200,000). The bond shall be conditioned upon providing adequate and sufficient service within all the applicant's service areas, including those for which franchises have previously been granted, shall be payable to the Commission, and shall be in a form acceptable to the Commission. In setting the amount of a bond, the Commission shall consider:

(1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation,
(2) The number of customers the applicant now serves and proposes to serve,
(3) The likelihood of future expansion needs of the service,
(4) If the applicant is acquiring an existing company, the age of the equipment, and
(5) Any other relevant factors.

Any interest earned on a bond shall be payable to the water or sewer company that posted the bond.

(b) The Commission shall not require an applicant to post the bond required by subsection (a) if:

(1) The applicant has posted a bond for the water or sewer system with another State government agency and the Commission finds that bond satisfies the purposes of this section; or
(2) The applicant has posted bonds for other water or sewer systems with the Commission totalling two hundred thousand dollars ($200,000).

(c) The utility, the Public Staff, the Attorney General, and any other party may, at any time after the amount of a bond is set, apply to the Commission to raise or lower the amount based on changed circumstances.

(d) The appointment of an emergency operator, either by the superior court in accordance with G.S. 62-118(b) or by the Commission with the consent of the owner or operator, operates to forfeit the bond required by this section. The court or Commission, as appropriate, shall determine the amount of money needed to alleviate the emergency and shall order that amount of the bond to be paid to the Commission as trustee for the water or sewer system.

(e) If the person who operated the system before the emergency was declared desires to resume operation of the system upon a finding that the emergency no longer exists, the Commission shall require him to post a new bond, the amount of which may be different from the previous bond. (1987, c. 490, s. 2.)

Editor's Note. — Session Laws 1987, c. 490, s. 3 as rewritten by Session Laws 1987, c. 783, s. 9, makes this section applicable to all applications for franchises filed on or after October 1, 1987.

§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.

(b) No certificates or permits issued under the provisions of this Chapter for motor carriers of passengers shall be sold, assigned, pledged, transferred, or control changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any motor carrier of passengers be made through acquisition of control by stock purchases or otherwise, except after application to and written approval by the Commission as in this section provided, provided that the above provisions shall not apply to regular trading in listing securities on recognized markets. The applicant shall give not less than 10 days' written notice of such application by registered mail or by certified mail to all connecting and competing carriers. When the Commission is of the opinion that the transaction is consistent with the purposes of this Chapter the Commission may, in the exercise of its discretion, grant its approval, provided, however, that when such transaction will result in a substantial change in the service and operations of any motor carrier of passengers party to the transaction, or will substantially affect the operations and services of any other motor carrier, the Commission shall not grant its approval except upon notice and hearing as required in G.S. 62-262 for contract carriers of passengers and G.S. 62-262.1 for bus companies upon an application for an original certificate or permit. In all cases arising under the subsection it shall be the duty of the Commission to require the successor carrier to satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured. The Commission may attach to its approval of any transaction arising under the section such other conditions as the Commission may determine are necessary to effectuate the purposes of this Article.

(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5). Provided, however, the Commission shall approve, without imposing conditions or limitations, applications for the transfer of a bus company franchise made under this section upon finding that the person acquiring the franchise or control of the franchise is fit, willing and able to perform services to the public under that franchise. (1947, c. 1008, s. 22; 1949, c. 1132, s. 20; 1953, c. 1140, s. 3; 1957, c. 1152, s. 10; 1961, c. 472, ss. 6, 7; 1963, c. 1165, s. 1; 1967, c. 1202; 1985, c. 676, ss. 10, 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, inserted "for contract carriers of passengers and G.S. 62-262.1 for bus companies" in the third sentence of subsection (b) and added the last sentence of subsection (e).

§ 62-112. Effective date, suspension and revocation of franchises; dormant motor carrier franchises.

(d) This section shall be applicable to bus companies. (1947, c. 1008, s. 23; 1949, c. 1132, s. 21; 1963, c. 1165, s. 1; 1967, c. 1201; 1985, c. 676, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Section 25 of Session Laws 1985, c. 676, provides: "Issuance of certificates of authority. Within 180 days after the effective date of this act a certificate of authority shall be issued by the North Carolina Utilities Commission to each person authorized as of the effective date of this act to provide intrastate services within North Carolina as a common carrier of passengers by motor vehicle, and the certificate of authority shall authorize the same type and extent of services authorized prior to the effective date of this act. Upon issuance of the certificate of authority, the franchise certificate issued prior to the effective date of this act shall be cancelled. Each person authorized as of the effective date of this act to provide intrastate services within North Carolina as a common carrier of passengers by motor vehicle shall be authorized to continue to provide the same type and extent of services for a period of 180 days following the effective date of this act. No certificate of authority shall be issued to operate as a common carrier of passengers by motor vehicle to a person who, during the two years prior to the effective date of this act, failed to perform any transportation for compensation for a period of 30 days or more, without a determination, after notice and hearing, as to whether the franchise certificate should be declared dormant and cancelled. The Commission, on its own motion, or each person authorized as of the effective date of this act to provide intrastate services within North Carolina as a common carrier of passengers by motor vehicle, shall be entitled to commence within 120 days of the effective date of this act, a complaint proceeding to cancel any certificate of authority issued to a common carrier of passengers by motor vehicle which, during the two years prior to the effective date of this act, failed to perform any transportation for compensation for a period of 30 days or more. The complaint proceeding shall be governed by the provisions of G.S. 62-112." Session Laws 1985, c. 676, is effective upon ratification. The act was ratified July 10, 1985.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added subsection (d).

§ 62-113. Terms and conditions of franchises.

(a) Each franchise shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, a motor carrier or other public utility is authorized to operate: and there shall, at the time of issuance and from time to time thereafter, be attached to the privileges granted by the franchise such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of a carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of a carrier or other public utility, the requirements established by the Commission under this Chapter; provided, however, that no terms, conditions, or limitations shall restrict the right of a motor carrier of property only to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the franchises, as the development of the business and the demands of the public shall require. This subsection shall not be applicable to bus companies or their franchises.

(b) Each bus company franchise shall specify the fixed routes over which, and the fixed termini, if any, between which the bus company may operate. A franchise for bus companies engaged in charter operations may provide for fixed routes or statewide operating authority. (1947, c. 1008, s. 12; 1949, c. 1132, s. 11; 1963, c. 1165, s. 1; 1985, c. 676, s. 13.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, designated the first paragraph as subsection (a), added the last sentence of that subsection, and added new subsection (b).

§ 62-118. Abandonment and reduction of service.

(a) Upon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have power, after petition and notice, to authorize by order any public utility to abandon or reduce such service. Upon request from any party having an interest in said utility service, the Commission shall hold a public hearing on such petition, and may on its own motion hold a public hearing on such petition. Provided, however, that abandonment or reduction of service of motor carriers shall not be subject to this section, but shall be authorized only under the provisions of G.S. 62-262(h) and G.S. 62-262.2.

(1933, c. 307, s. 32; 1963, c. 1165, s. 1; 1971, c. 552, s. 1; 1973, c. 1393; 1985, c. 676, s. 14.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Section 62-262(h), referred to in subsection (a) of this section, was repealed by Session Laws 1985, c. 676, s. 19.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending procedures before the North Carolina Utilities Commission, substituted "G.S. 62-262(h) and G.S. 62-262.2" for "G.S. 62-262(k)" at the end of subsection (a).

CASE NOTES

Showing Required for Abandonment. —

Where a utility seeks authorization to abandon service, the ultimate issue for resolution is whether the operation of the system can produce sufficient revenues to meet the expenses of operation. To resolve this issue, there must be findings of fact as to the reasonable expenses of operation and the revenues which the system may be reasonably expected to produce. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

The burden is on the utility seeking authorization to abandon service to establish that there is no reasonable probability of its being able to realize sufficient revenue by the rendition of such service to meet its expenses. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

The Commission's power to require a utility to continue a service is not unlimited. To require a utility, particularly a small operation, to continue an unprofitable operation would violate constitutional guarantees against the taking of property without just compensation. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Discretionary Power of Commission to Authorize Discontinuance. —

The power of the Commission to authorize an abandonment of service is, in large measure, discretionary. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Evidence Held to Show Convenience and Necessity. — Evidence before the Commission indicating that a number of the residences served by applicant's water and sewer systems were situated on quarter-acre lots, which were of insufficient size to support both a well and septic system, and that the occupants of these residences, who were currently among appellant's customers, had no alternative means of water supply or sewage disposal other than the service provided by appellant, clearly supported the conclusion not only that appellant's services constituted a convenience to that segment of the public who used them, but also that such services were necessary to the safety and health of the public. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Propriety of Order Requiring Continued Operation. — An order of the Commission, based upon proper findings and conclusions, requiring appellant to continue operation of her utilities would not violate constitutional prohibitions against involuntary servitude. Appellant voluntarily put her land and equipment to a public use and collected compensation for the services which she provided, and having done so, the Commission may require that she continue to use it in the service to which she voluntarily dedicated it, so long as she is justly compensated for such service. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Article 7.

Rates of Public Utilities.

§ 62-130. Commission to make rates for public utilities.

(b) Repealed by Session Laws 1985, c. 676, s. 15, effective July 10, 1985.

(1899, c. 164, ss. 2, 7, 14; 1903, c. 683; Rev., ss. 1096, 1099, 1106; 1907, c. 469, s. 4; Ex. Sess. 1908, c. 144, s. 1; 1913, c. 127, s. 2; 1917, c. 194; C.S., ss. 1066, 1071, 3489; Ex. Sess. 1920, c. 51, s. 1; 1925, c. 37; 1929, cc. 82, 91; 1933, c. 134, s. 8; 1941, c. 97; 1953, c. 170; 1963, c. 1165, s. 1; 1981, c. 461, s. 1; 1985, c. 676, s. 15(1).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending procedures before the North Carolina Utilities Commission, deleted subsection (b), which read: "The Commission may make or approve in its discretion special passenger or excursion rates."

CASE NOTES

Article Not in Conflict, etc. —

The rates of public utilities under the jurisdiction of the Utilities Commission are not subject to attack on the basis that they violate the antitrust laws. Challenges to rates are limited by the legal theories provided by the Public Utilities Act. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985).

When the Utilities Commission found that natural gas corporation had received payments in lieu of what it would have received under a service contract and that the customers of the company were bearing the company's contract costs, it was within the power of the Commission under G.S. 62-32(b) and subsections (a) and (d) of this section to take these payments into account in setting a reasonable rate. State ex rel. Utilities Comm'n v. North Carolina Natural Gas Corp., 76 N.C. App. 330, 332 S.E.2d 755, cert. denied, 314 N.C. 675, 336 S.E.2d 405 (1985).

Applied in State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Cited in Aluminum Co. of Am. v. Utilities Comm'n, 713 F.2d 1024 (4th Cir. 1983); State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

§ 62-131. Rates must be just and reasonable; service efficient.

CASE NOTES

Increase May Be Granted Notwithstanding Service Inadequacy. — It is not unlawful for the Commission, in the exercise of its discretion, to grant an increase in rates, notwithstanding existing service inadequacy, as an appropriate step in the improvement of the service. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

Deduction of Profit from Rate Increase Upheld. — Based on the evidence of utility's inadequate service record, the Commission's determination

to penalize it by deleting its profit from rate increase was clearly proper. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

§ 62-132. Rates established under this Chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates.

CASE NOTES

One claiming, etc. —

The burden of showing the impropriety of rates established by the Commission lies with the party alleging such error. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

Notice of Possible Liability for Refund. — Where a corporation was held to be a public utility and made a party to a general rate case this was adequate notice that it might be held liable for a refund. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Applied in State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

§ 62-133. How rates fixed.

(a) In fixing the rates for any public utility subject to the provisions of this Chapter, other than bus companies, motor carriers and certain water and sewer utilities, the Commission shall fix such rates as shall be fair both to the public utilities and to the consumer.

(b) In fixing such rates, the Commission shall:

(1) Ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within the State, less that portion of the cost which has been consumed by previous use recovered by depreciation expense plus the reasonable original cost of investment in plant under construction (construction work in progress). In ascertaining the cost of the public utility's property, construction work in progress as of the effective date of this subsection shall be excluded until such plant comes into service but reasonable and prudent expenditures for construction work in progress after the effective date of this subsection may be included, to the extent the Commission considers such inclusion in the public interest and necessary to the financial stability of the utility in question, subject to the provisions of subparagraph (b)(4a) of this section.

(2) Estimate such public utility's revenue under the present and proposed rates.

(3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

(4) Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) as will enable the public

utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

(4a) Require each public utility to discontinue capitalization of the composite carrying cost of capital funds used to finance construction (allowance for funds) on the construction work in progress included in its rate based upon the effective date of the first and each subsequent general rate order issued with respect to it after the effective date of this subsection; allowance for funds may be capitalized with respect to expenditures for construction work in progress not included in the utility's property upon which the rates were fixed. In determining net operating income for return, the Commission shall not include any capitalized allowance for funds used during construction on the construction work in progress included in the utility's rate base.

(5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to subdivision (3) of this subsection the rate of return fixed pursuant to subdivisions (4) and (4a) on the cost of the public utility's property ascertained pursuant to subdivision (1).

(1899, c. 164, s. 2, subsec. 1; Rev., s. 1104; C.S., s. 1068; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1971, c. 1092; 1973, c. 956, s. 1; c. 1041, s. 1; 1975, c. 184, s. 2; 1977, c. 691, ss. 2, 3; 1981, c. 476; 1981 (Reg. Sess., 1982), c. 1197, s. 6; 1985, c. 676, s. 15(2).)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — The reference in subdivision (b)(1) to "subparagraph (b)(5) of this section" has been corrected to read "subparagraph (b)(4a) of this section" in accordance with State v. Conservation Council of North Carolina, 312 N.C. 59, 320 S.E.2d 679 (1984), which noted the error.

Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending procedures before the North Carolina Utilities Commission, inserted "bus companies" in subsection (a).

CASE NOTES

I. IN GENERAL.

Section is not unconstitutional. Stimulation of the economy is an essential public and governmental purpose and the manner in which this purpose is to be accomplished is, within constitutional limits, exclusively a legislative decision. The authority to set rates to be charged by a public utility for its services rests in the legislature and is delegated by it to the Utilities Commission under sufficient rules and standards to guide the Commission in exercising this power. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

Requirement That Utility Prefile Testimony prior to That of Intervenors Is Constitutional. — A utility's

due process rights were not violated by requiring it to prefile its testimony prior to the prefiling of the intervenors' testimony and requiring it to file its brief concurrently with the intervenors, where it should have been forewarned of what the intervenors intended to show. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Purpose of Chapter. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

Purpose of Subsection (f). —

Subsection (f) is a mechanism whereby a natural gas utility may pass on to its customers supplier increases or decreases without going through the costly and protracted procedures of a general rate case. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Subsection (f) deals only with rate changes while § 62-136(c) specifically sets forth the criteria pursuant to which refunds should be distributed. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Section 62-136(c) more specifically applies to supplier refunds received by natural gas distributing utilities than does subsection (f) and is the proper statute to be applied in determining the appropriate distribution of these supplier refunds. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Proceeding Is General Rate Case Where Question Is Fair Return on Investment. — The Commission was correct in conducting the proceeding as a general rate case, where the primary question was what is a fair rate of return on the utility's investment so as to enable it by sound management to pay a fair profit to its stockholders and to maintain and expand its facilities and services in accordance with the reasonable requirement of its creditors. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

It is a well-established rule that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence. State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

An order which indicates that the Utilities Commission accorded only minimal consideration to competent evidence constitutes error at law and is correctable on appeal. State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

Applied in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983); State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 309 N.C. 238, 306 S.E.2d 113 (1983); State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 309 N.C. 195, 306 S.E.2d 435 (1983); State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 64 N.C. App. 609, 307 S.E.2d 803 (1983); State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985).

Cited in State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

II. POWERS AND DUTIES OF THE UTILITIES COMMISSION, GENERALLY.

Court may not substitute its judgment, either with respect to factual disputes or policy disagreements, for that of the Commission. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

Commission to Fix Rates As Low As, etc. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

The Findings of the Commission, etc. —

The Commission as factfinder, determines the credibility of the evidence, and its findings of fact which are supported by competent, material and substantial evidence, are conclusive, and the court is bound by them. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983); State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

And May Not Be Disturbed Merely Because, etc. —

In accord with 1st paragraph in the main volume. See State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

Nowhere in subdivision (b)(1) is there a requirement that the Commission make findings as to the cost of each project and when it will be needed. To require such extensive evidence would put an undue burden on the utility and cause the rate-making process to be more time consuming and difficult of administration. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Subdivision (b)(1) does not require the Commission to make new findings on the need for construction. Before any public utility begins the construction of a facility for generating electricity for use by the public it must first obtain from the Commission a certificate stating that public convenience and necessity requires, or will require such construction. Before such a certificate can be granted the applicant must file an estimate of construction costs and the Commission must hold public hearings. This procedure satisfies the argument that the construction must be necessary. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Findings, inferences, conclusions or decisions of the Commission which are arbitrary or capricious and which prejudice substantial rights of appellants are not binding on a reviewing court. State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

When Commission's Orders Affirmed. — The rate order of the Commission will be affirmed if upon consideration of the whole record the court finds that the Commission's decision is not affected by error of law and the facts found by the Commission are supported by competent, material and substantial evidence, taking into account any contradictory evidence or evidence from which conflicting inferences could be drawn. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

III. FIXING OF RATES, GENERALLY.

Fixing of "reasonable and just" rates involves a balancing of shareholder and consumer interests; the Utilities Commission must therefore set rates which will protect both the right of the public utility to earn a fair rate of return for its shareholders and ensure its financial integrity, while also protecting the right of the utility's intrastate customers to pay a retail rate which reasonably and fairly reflects the cost of service rendered on their behalf. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

The question of whether rates prescribed under this Chapter are so unreasonable and unjust to the company and its stockholders that they amount to an unconstitutional confiscation of a utility's property necessarily involves an inquiry as to what is reasonable and just for the public. The public cannot properly be subject to unreasonable rates in order simply that stockholders may earn dividends. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 St. Ct. 565, 88 L. Ed. 2d 550 (1985).

Rates which the Commission simply allows to go into effect may be challenged by interested parties or the Commission and after a hearing the Commission may order a refund if it finds the rates to be different from those established by the Commission and unjust or unreasonable. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Commission Need Not Guarantee Return Requested. — While the Utilities Commission is to fix rates that will enable the utility by sound management to pay all of its costs of operation and to have left over a fair return upon the fair value of its properties, it is not required to guarantee the return requested by the utility where the facts and circumstances warrant otherwise. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 St. Ct. 565, 88 L. Ed. 2d 550 (1985).

A rate must not only be fair, etc. —

The rates established by the Commission must be fair to both the utility and the customer. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

In finding essential, ultimate facts, the Commission must, etc. —

In setting rates, the Utilities Commission must consider not only those specific indicia of a utility's economic status set out in subsection (b) of this section, but also all other material facts of record which may have a significant bearing on the determination of reasonable and just rates. State ex rel. Utilities Comm'n v. Thornburg, 314 N.C. 509, 334 S.E.2d 772 (1985).

As to the practice of rolling-together accounting data and allocating costs between jurisdictional and nonjurisdictional service, see State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

Shifting of Onus to Parent Corporation. — In view of the Utilities Commission's determination that unsound or "absentee" management decisions on the part of a utility, and parental domination on the part of an aluminum producing company that was both parent and customer, left the utility with insufficient resources to meet its steadily increasing public load and lacking in contractual power supply arrangements tailored to meet its public service needs at reasonable prices, it was well within the Commission's rate making authority to shift the onus of those managerial shortcomings from the pockets of utility's retail rate payers to the corporate offices of the aluminum producing company. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. — 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

Refund of Over-Collection. — The Commission erred by refunding utility's over-collection by deducting the amount of the deferred fuel account from the utility's annual rate increase, as this would, in effect, require the company to pay the refund annually for as long as the rates fixed in the case remained in effect. The Commission should have provided for a lump-sum refund (i.e., a one-time rate reduction) or a rate reduction over a period of time. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Retroactive ratemaking occurs when a rate is set so as to permit collection in the future for expenses attributable to past services. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

It is not retroactive ratemaking for a corporation to be held responsible for a refund for the period prior to when it was declared a public utility. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Charges Based on Utility's Percent of Requirements from Entire System. — By requiring a utility's retail customers to pay demand and energy charges based on the utility's percent of the demand and energy requirements from the capacity of the entire system the Commission used a methodology which could not be disturbed on appeal. The methodology calculated the cost of the generation which the unified system traded to TVA for the electricity used by the system. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Method Which Did Not Prefer State Customers over Foreign Customers Held Not to Violate Commerce Clause. — A provision in a Commission order that a "combined system's North Carolina public load has first call on the total electric energy output of the combined system, and to the extent that said output exceeds the requirements of the North Carolina public load, such excess will be available for sale and will be purchased by [the corporation of which the system was a wholly-owned subsidiary]" would violate the commerce clause. However, where the methodology used by the Commission allowed the combined system to recover the costs of the percentage of energy it used based on its percentage of the costs of the energy generated and purchased by the combined system, North Carolina customers would not be given a preference and no commerce clause violation would occur. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Reduction of Future Rate Held Not Retroactive Rate Making. — An order which did not reduce revenue to compensate in the future for what may have been an excessive rate in the past, but reduced the future rate for what it found

was a more realistic investment credit tax amortization, is not retroactive rate making. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

Court-Ordered Refund Is Not Retroactive Rate Making. — The Supreme Court has the power to direct the Commission to order refunds from rates established by final order of the Commission. This would not constitute retroactive rate making prohibited under the North Carolina Statutes. Retroactive rate making occurs when the utility is required to refund revenues collected, pursuant to the then lawfully established rates, for such past use. A rate has not been lawfully established simply because the Commission has ordered it. If the Commission makes an error of law in its order from which there is a timely appeal the rates put into effect by that order have not been "lawfully established" until the appellate courts have made a final ruling on the matter. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

IV. RATE BASE.

A. In General.

Costs are presumed to be reasonable unless challenged. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

The purpose of subdivision (b)(4a) is to prevent utility companies from obtaining a double recovery by capitalizing the allowance for funds used during construction after they have had construction work in progress expenses for the same construction included in the rate base. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Question Whether Property Is, etc.—

In accord with main volume. See State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

What Operating Expenses May Be Considered. — This section limits the property upon which North Carolina consumers are required to pay a return to the property used and useful in providing intrastate service; when the provisions of (b)(1), (b)(3) and (c) are read in pari materia, it is apparent that the only operating expenses which the Utilities Commission may consider in setting intrastate rates for North Carolina public utilities are those incurred in the provision of service to a utility's North Carolina consumers. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397, probable jurisdiction noted, — U.S. —, 106 S. Ct. 565, 88 L. Ed. 2d 550 (1985).

This section clearly provides that the rate base and allowable operating expenses of a utility are limited to those costs incurred in providing service to the company's North Carolina retail customers. State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

The Commission must include all reasonable construction work in progress expenditures in the rate base. The only matter left to the discretion of the Commission is whether such expenditures are reasonable and prudent. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Only Reasonable Construction Work in Progress Expenditures Included. — The legislature mandates that the only expenditures for construction work in progress which can properly be included in rate base are reasonable expenditures. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

Only Reasonable Construction Work in Progress, etc. —

Under the "financial stability" requirement of subdivision (b)(1) of this section, construction work in progress may be included in a utility's rate base to the extent that the Commission determines that the inclusion is necessary to allow the utility to maintain a generally good overall financial status. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Subdivision (b)(1) clearly commits to the discretion of the Commission the determination of what amount of construction work in progress, if any, to include in the utility's rate base. This discretion is tempered, however, by the statute's requirement that the expenditures be reasonable and prudent and that the Commission find that the inclusion is in the public interest and necessary to the financial stability of the utility in question. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Including construction work in progress in rate base did not lessen rules and standards set by legislature. Reasonableness remains the standard. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

Evidence as to Construction Work in Progress. — To require the utility company to introduce evidence with respect to every item comprising construction work in progress would be an exercise in futility. The burden of proof would be unduly and unnecessarily burdensome and the rate-making process would become even more time consuming and difficult of administration. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

Evidence as to Construction Work in Progress. —

Evidence that utility's bond rating was in jeopardy of falling from an A rating to a BAA rating and that the inclusion of the additional construction work in progress was necessary to "stabilize" the company at its A rating level, along with other evidence, supported the Commission's finding that the inclusion of additional construction work in progress was necessary to the utility's financial stability. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Evidence of whether the plant under construction will be completed within a reasonable time is pertinent to deciding if expenditures for such construction are reasonable and prudent. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

While it is the better practice for the Commission to specifically find that the construction will be completed within a reasonable time, the statute does not require it so long as there is evidence in the record that the plant would be completed within a reasonable time. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

Before 1977 amendment of subdivision (b)(1), utilities were not allowed to include construction work in progress (CWIP) in rate base. Instead, a utility would add together all of the costs incurred by a project each year and multiply that by the allowance for funds used during construction (AFUDC) rate. The AFUDC rate is a rate of interest which represents as nearly as possible the actual cost of money used for construction. The figure that results from multiplying the costs times the AFUDC rate is capitalized annually until the plant comes into service and is then recovered along with the original costs of the plant. State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

When Companies Considered as Single, Integrated System for Ratemaking. — Where two companies traded all their generation to TVA and received in exchange for this entitlements of energy which they divided as they pleased, the Commission could conclude from these facts that the two companies constitute a single, integrated system for ratemaking purposes. State ex rel. Utilities Comm'n v. Nantahala Power & Light Co., 65 N.C. App. 198, 309 S.E.2d 473 (1983), aff'd, 313 N.C. 614, 332 S.E.2d 397 (1985).

Subdivision (b)(1) is designed to make utility customers finance reasonable construction costs arising after July 1, 1979, regardless of whether that construction becomes useful to the customers. State ex rel. Utilities Comm'n v. Conservation Council, 64 N.C. App. 266, 307 S.E.2d 375 (1983), modified on other grounds, 66 N.C. 456, 311 S.E.2d 617, rev'd in part, 312 N.C. 59, 320 S.E.2d 679 (1984).

VI. OPERATING EXPENSES AND WORKING CAPITAL.

Exclusion of Expenditures Relating to Unsuccessful Expansion Attempt. — The Commission's conclusion that expenditures related to utility's unsuccessful attempt to expand its service area should be excluded from its cost of service was supported by substantial evidence and was neither arbitrary nor capricious. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

VII. TEST PERIOD.

Adjustments for Abnormalities, etc. —

Provisions in this section compel the conclusion that the Utilities Commission is required to adjust test period data to reflect abnormalities which had a probable impact on the utility's reve-

nues and expenses during the test period. State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

This section requires the Commission to adjust test period data to reflect abnormalities which had a probable impact on the utility's revenues and expenses during the test period. This allows for a reasonably accurate estimate of what may be anticipated in the future. However, no pro forma adjustment is to be made unless the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Since fuel costs comprise a large portion of a utility's expenses, the statutory mandate to normalize test period data includes a requirement that the Commission adjust the test period fuel costs for any abnormalities established by competent, material, and substantial evidence. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Since the system nuclear capacity factor directly impacts upon the generation mix, which in turn affects fuel costs, any abnormality in the system nuclear capacity which is shown to have existed during the test year must be adjusted. State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

Commission did not improperly refuse to adjust its figure for revenues based on evidence of post-test year growth, even though it increased utility's operating expenses based on other post-test year evidence, where contrary to the Public Staff's contention, there was no correlation between the use of post-test year salary expenses and the utility's increase in customers, as the Commission in its order explained that the use of 1985 estimated salary expenditures was appropriate because it had ordered additional improvements and increased routine maintenance, and thus the increased allowance in operating expenses for salaries did not require any offsetting change in revenue. State ex rel. Utilities Comm'n v. Public Staff, N.C. Utils. Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986).

VIII. OTHER FACTS.

B. Quality and Adequacy of Service.

Efficiency of Operations. — It is not only entirely appropriate but even necessary for the Commission to take into account the efficiency of the company's operations in fixing its rates in a general rate case as provided in this section. State ex rel. Utilities Comm'n v. Public Staff — North Carolina Util. Comm'n, 58 N.C. App. 453, 293 S.E.2d 888 (1982), modified and aff'd, 309 N.C. 195, 306 S.E.2d 435 (1983).

Poorly maintained equipment justifies a subtraction from both the original cost and the reproduction cost of existing plant before weighing these factors in ascertaining the present "fair value" rate base of the utility's properties as required by this section. Serious inadequacy of a utility company's service, whether due to poor maintenance of its equipment or to other causes, is one of the facts which the Commission is required to take into account in determining what is a reasonable rate to be charged by the particular utility company for the service it proposes to render. State ex rel. Utilities Comm'n v. Public Staff — North Carolina Util. Comm'n, 58 N.C. App. 453, 293 S.E.2d 888 (1982), modified and aff'd, 309 N.C. 195, 306 S.E.2d 435 (1983).

Fuel Costs. — The requirement, for general rate cases, of an inquiry into the reasonableness of costs incurred extends to fuel costs incurred by the utility. State ex rel. Utilities Comm'n v. Public Staff — North Carolina Util. Comm'n, 58 N.C. App. 480, 293 S.E.2d 880 (1982), rev'd on other grounds, 309 N.C. 195, 306 S.E.2d 435 (1983).

§ 62-133.2. (Repealed effective July 1, 1989) Fuel charge adjustments for electric utilities.

(a) The Commission may allow electric utilities to charge a uniform increment or decrement as a rider to their rates for changes in the cost of fuel and the fuel component of purchased power used in providing their North Carolina customers with electricity from the cost of fuel and the fuel component of purchased power established in their previous general rate case.

(b) For each electric utility engaged in the generation and production of electric power by fossil or nuclear fuels, the Commission shall hold a hearing within 12 months of the last general rate case order and determine whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under base rates established in the last preceding general rate case. Additional hearings shall be held on an annual basis but only one hearing for each such electric utility may be held within 12 months of the last general rate case.

(c) Each electric utility shall submit to the Commission for the hearing verified annualized information and data in such form and detail as the Commission may require, for an historic 12-month test period, relating to:

(1) Purchased cost of fuel used in each generating facility owned in whole or in part by the utility.
(2) Fuel procurement practices and fuel inventories for each facility.
(3) Burned cost of fuel used in each generating facility.
(4) Plant capacity factor for each generating facility.
(5) Plant availability factor for each generating plant.
(6) Generation mix by types of fuel used.
(7) Sources and fuel cost component of purchased power used.
(8) Recipients of and revenues received for power sales and times of power sales.
(9) Test period kilowatt hour sales for the utility's total system and on the total system separated for North Carolina jurisdictional sales.

(d) The Commission shall provide for notice of a public hearing with reasonable and adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the Commission shall receive evidence from the utility, the public staff, and any intervenor desiring to submit evidence, and from the public generally. In reaching its decision, the Commission shall consider all evidence required under subsection (c) of this section as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the price of fuel consumed and changes in the price of the fuel in the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed. The Commission shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period, based upon the prudent standards set pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. The Com-

§ 62-133.2 has a delayed repeal date. See notes for date.

mission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case. The burden of proof as to the correctness and reasonableness of the charge and as to whether the fuel charges were reasonably and prudently incurred shall be on the utility. The Commission shall allow only that portion, if any, of a requested fuel adjustment that is based on adjusted and reasonable fuel expenses prudently incurred under efficient management and economic operations. In evaluating whether fuel expenses were reasonable and prudently incurred, the Commission shall apply the rule adopted pursuant to subsection (d1). To the extent that the Commission determines that an increment or decrement to the rates of the utility due to changes in the cost of fuel and the fuel cost component of purchased power over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

(d1) Within one year after ratification of this act, for the purposes of setting fuel rates, the Commission shall adopt a rule that establishes prudent standards and procedures with which it can appropriately measure management efficiency in minimizing fuel costs.

(e) If the Commission has not issued an order pursuant to this section within 120 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested fuel adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

(f) Nothing in this section shall relieve the Commission from its duty to consider the reasonableness of fuel expenses in a general rate case and to set rates reflecting reasonable fuel expenses pursuant to G.S. 62-133. (1981 (Reg. Sess., 1982), c. 1197, s. 1; 1987, c. 677, s. 1.)

Section Repealed Effective July 1, 1989. — This section is repealed, effective July 1, 1989, by Session Laws 1987, c. 677, s. 5.

Editor's Note. — Session Laws 1987, c. 677, ss. 2 and 3 provide:

"The enactment of this act shall be construed as clarifying rather than changing the meaning of G.S. 62-133.2 as it was previously worded and as construed by the Utilities Commission in Commission Rule R8-55 so that electric utilities will recover only their reasonable fuel expenses prudently incurred, including the fuel cost component of purchased power, with no over-recovery or under-recovery, in a manner that will serve the public interest.

"Until the Commission has formally adopted a rule as prescribed by subsection (d1) of G.S. 62-133.2 all fuel charge adjustment proceedings shall be heard and decided pursuant to the applicable provisions of subsection (a), (b), (c), (d), (e) and (f) of G.S. 62-133.2 and Commission Rule R8-55."

Effect of Amendments. — The 1987 amendment, effective July 24, 1987, rewrote subsection (d) and added subsection (d1).

CASE NOTES

This section was enacted by the General Assembly in order to eliminate undesirable limitations which existed under former § 62-134(e). State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

Subsections (a) and (d) Compared. — Subsection (a) of this section defines what decision the Commission is authorized to make, while subsection (d) of this section directs how the Commission should reach its decision. State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

True-Ups for Past Over or Under Recoveries Not Authorized. — This section was not intended by the General Assembly to authorize true-ups for past over-recoveries or under-recoveries of fuel costs or the fuel component of purchased power of electric utilities. State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

By enacting subsection (d) of this section, the General Assembly did not modify the judicially adopted rule prohibiting retroactive ratemaking, heretofore extant in this State, so as to authorize the Utilities Commission to employ an Experience Modification Factor in connection with an electric utility's fuel charge adjustment proceedings in order to provide for a "true-up" of the utility's past over-recoveries or under-recoveries of fuel costs. Subsection (d) does not authorize such a "true-up" system. State ex rel. Utilities Comm'n v. Thornburg, — N.C. App. —, 353 S.E.2d 413 (1987).

Applied in State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 309 N.C. 195, 306 S.E.2d 435 (1983).

Cited in State ex rel. Utilities Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986).

§ 62-134. Change of rates; notice; suspension and investigation.

(g) The provisions of this section shall not be applicable to bus companies or to their rates, fares or tariffs. (1933, c. 307, s. 7; 1939, c. 365, s. 3; 1941, c. 97; 1945, c. 725; 1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1959, c. 422; 1963, c. 1165, s. 1; 1971, c. 551; 1973, c. 1444; 1975, c. 243, s. 8; c. 510, c. 867, s. 7; 1981 (Reg. Sess., 1982), c. 1197, s. 2; 1985, c. 676, s. 15(3).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added subsection (g).

CASE NOTES

I. IN GENERAL.

Cited in State ex rel. Utilities Comm'n v. Conservation Council, 64 N.C. App. 266, 307 S.E.2d 375 (1983); State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 64 N.C. App. 609, 307 S.E.2d 803 (1983); State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

III. RATE CHANGES BASED ON FUEL COSTS UNDER FORMER SUBSECTION.

The purpose of the expedited fuel proceeding was to allow a utility to change its rates based solely on fluctuations in fuel costs. The reasonableness of the utility's based fuel costs are not to be considered. State ex rel. Utilities

Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

From a review of the language, purpose and history of former subsection (e), it can be concluded that the legislature intended that the Utilities Commission consider in the fuel adjustment proceedings only the fluctuations in the price of fossil fuels — oil, coal and natural gas — used by the utility in the production of electric power in its own generating units. The legislature did not intend to include in the expedited hearing proceedings the myriad of issues relating to purchased or interchange power which necessarily require closer scrutiny. Subsequent action by the legislature in enacting § 62-133.2, which makes express provision for the consideration of such issues in the general rate cases, has now made its intent clear. State ex rel. Utilities Comm'n v. Public Staff-North Carolina Util. Comm'n, 309 N.C. 195, 306 S.E.2d 435 (1983).

§ 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers.

CASE NOTES

Under the 1981 amendment, the Commission is empowered to order the distribution of supplier refunds to either current or past customers, utilizing whatever method the Commission deems most appropriate. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Under the 1981 amendment to subsection (c), it is no longer required that the refund be practicable and that the utility have a reasonable return exclusive of the refund in order for the Commission to direct a customer refund. Moreover, the statute no longer provides for distribution of the refunds to customers in proportion to their payment of the charges refunded. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Prior to the 1981 amendment, the legislature intended for the refunds to be made in proportion to each customer's usage in the refund period during which he paid excess charges. There was no language in the statute requiring distribution by customer class. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Prior to the 1981 amendment, subsection (c) of this section required that refunds be distributed only to those individuals who actually paid the overcharges. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

All refunds received after May 28, 1981, will be governed by the 1981 amendment to subsection (c); 1981 Session Laws, c. 460, s. 1. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Subsection (c) speaks in terms of when the refund is received by the utilities, not to the period of time to which the refunds relate. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Subsection (c) of this section more specifically applies to supplier refunds received by natural gas distributing utilities than does § 62-133(f) and is the proper statute to be applied in determining the appropriate distribution of these supplier refunds. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Distribution of refunds received by a utility after the effective date of the statute (January 1, 1964) are governed by subsection (c). State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Section 62-133(f) deals only with rate changes while subsection (c) of this section, however, specifically sets forth the criteria pursuant to which refunds should be distributed. State ex rel. Utilities Comm'n v. Public Serv. Co., 307 N.C. 474, 299 S.E.2d 425 (1983).

Applied in State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982); State ex rel. Utilities Comm'n v. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984).

§ 62-137. Scope of rate case.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982); State ex rel. Utilities Comm'n v. Edmisten, 314 N.C. 122, 333 S.E.2d 453 (1985).

§ 62-140. Discrimination prohibited.

(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section; provided that it shall not be an unreasonable preference or advantage or constitute discrimination against any person, firm or corporation or general rate payer for telephone utilities to contract with motels, hotels and hospitals to pay reasonable commissions in connection with the handling of intrastate toll calls charged to a guest or patient and collected by the motel, hotel or hospital; provided further, that payment of such commissions shall be in accordance with uniform tariffs which shall be subject to the approval of the Commission. Provided further, that it shall not be considered an unreasonable preference or advantage for the Commission to order, if it finds the public interest so requires, a reduction in local telephone rates for low-income residential consumers meeting a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission.

(1899, c. 164, s. 2, subsecs. 3, 5; Rev., s. 1095; 1913, c. 127, s. 6; C.S., s. 1054; 1933, c. 134, s. 8; c. 307, s. 6; 1941, c. 97; 1963, c. 1165, s. 1; 1965, c. 287, s. 8; 1977, 2nd Sess., c. 1146; 1985, c. 694, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Jan. 1, 1986, added the last sentence of subsection (a).

CASE NOTES

Classifications of customers and differences in rates must be based on reasonable differences in conditions, and the variance in charges must bear a reasonable proportion to the variance in conditions. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982), rev'd on other grounds, 309 N.C. 238, 306 S.E.2d 113 (1983).

There must be no unreasonable discrimination, etc. —

In accord with 1st paragraph in original. See State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985).

Provided Differences, etc. —

In accord with original. See State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985).

The authority of the Utilities Commission, etc. —

While decisions of the commission involving the exercise of its discretion of fixing rates are accorded great deference, the commission has no power to authorize rates that result in unreasonable and unjust discrimination. State ex

rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985).

Factors which constitute "substantial differences, etc." —

In determining whether rate differences constitute unreasonable discrimination, a number of factors should be considered: (1) quantity of use, (2) time of use, (3) manner of service, and (4) costs of rendering the two services. Other factors to be considered include competitive conditions, consumption characteristics of the several classes and the value of service to each class, which is indicated to some extent by the cost of alternate fuels available. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 313 N.C. 215, 328 S.E.2d 264 (1985).

Applied in State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n, — N.C. —, 333 S.E.2d 259 (1985).

Cited in State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

§ 62-141. Long and short hauls.

(a) Except when expressly permitted by the Commission, it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Chapter to charge and receive as great compensation for a shorter as for a longer distance.

(b) Upon application to the Commission, common carriers may in special cases be authorized to charge less for longer than for shorter distances for the transportation [of] property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

(c) The provisions of this section shall not be applicable to bus companies or to their rates, charges or tariffs. (1899, c. 164, s. 14; Rev., s. 1107; Ex. Sess. 1913, c. 20, s. 9; 1915, c. 17, s. 1; C.S., s. 1072; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1985, c. 676, s. 15(4).)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

The word "of" has been retained in brackets in subsection (b), notwithstanding the 1985 amendment, which deleted "of passengers or" following "transportation" in subsection (b).

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, deleted "of passengers or" following "transportation" in subsections (a) and (b) and added subsection (c).

§ 62-146. Rates and service of motor common carriers of property.

(a) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for transportation in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices relating thereto, and, in the case of property carriers, relating

to the manner and method of presenting, marking, packing and delivering property for transportation in intrastate commerce.

(c) Repealed by Session Laws 1985, c. 676, s. 15, effective July 10, 1985.

(d) In case of joint rates between common carriers of property, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. Upon investigation and for good cause, the Commission may, in its discretion, prohibit the establishment of joint rates or service.

(e) Any person may make complaint in writing to the Commission that any rate, classification, rule, regulations, or practice in effect or proposed to be put into effect, is or will be in violation of this Article. Whenever, after hearing, upon complaint or in an investigation or its own initiative, the Commission shall be of the opinion that any individual or joint rate demanded, charged, or collected by any common carrier or carriers by motor vehicle, or by any such common carrier or carriers in conjunction with any other common carrier or carriers, for transportation of property in intrastate commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate or the minimum or maximum, or the minimum and maximum rate thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier of property by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this Chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

(1947, c. 1008, s. 23; 1949, c. 1132, s. 22; 1963, c. 1165, s. 1; 1985, c. 676, s. 15(5).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. —The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added "of property" at the end of the catchline, inserted "of property" following "every common carrier" in subsection (a), inserted "of property" following "common carriers" near the beginning of the first sentence of subsection (d), deleted "and in the case of passenger carriers, the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes, and joint rates, regulations, or practices, applicable to the transportation of pas-

sengers by common carriers by motor vehicle, or the maximum or minimum, or maximum and minimum to be charged, and the terms and conditions under which such through routes shall be operated" at the end of subsection (e), inserted "of property" following "any common carrier" near the beginning of subsection (g), and deleted subsection (c), relating to certain duties of common carriers of passengers by motor vehicle.

§ 62-146.1. Rates and service of bus companies.

(a) It shall be the duty of every bus company to provide safe and adequate service, equipment and facilities for transportation of passengers in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices.

(b) The Commission by its rules and regulations may require the interlining of passengers by bus companies operating in intrastate commerce in this State where the point of destination of the passenger is not served by the originating carrier. In these cases it shall be the duty of every bus company to establish reasonable through rates with other bus companies; to establish, observe and enforce just and reasonable individual and joint rates, fares and charges and just and reasonable regulations and practices relating to the charges and to the issuance, form and substance of tickets and the carrying of personal and excess baggage.

(c) In case of joint rates between bus companies, it shall be the duty of the bus companies to establish just and reasonable regulations and practices in connection with the joint rates and just, reasonable and equitable divisions between the participating companies, which shall not unduly prefer or prejudice any of the participating companies.

(d) A bus company providing fixed route service may file with the Commission a petition for new or revised rates, fares or charges. Unless the Commission orders otherwise, no bus company shall make any changes in its rates, fares and charges, which have been established under this Chapter, except after 30 days' notice to the Commission. The notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The bus company shall also give notice, which may include notice by publication, of the proposed changes to other interested persons that the Commission may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed with the Commission and in force at the time and kept open to public inspection by the bus company. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under any conditions as it prescribes. All changes shall be immediately indicated by the bus company on its schedules.

(e) Whenever there is filed with the Commission by any bus company any schedule stating a new or revised rate, fare or charge, the Commission may, either upon complaint or upon its own initiative, after reasonable notice, hold a hearing to determine if the proposed new or revised rates, fares or charges are just and reasonable. Pending the hearing and a decision, the Commission, upon filing with the proposed schedule and delivering to the affected bus company a statement in writing of its reasons, may, at any time before they become effective, suspend the operation of the rate or rates, for a period not to exceed 120 days from the filing of the petition. If the proceeding has not been concluded and a final order made within

the period of suspension, the proposed change of rate shall go into effect at the end of the 120-day period.

(f) In any proceeding to determine the justness or reasonableness of any rates, fares or charges of a bus company, the Commission shall authorize revenue levels that are adequate under honest, economical, and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the Commission under this subsection shall allow the bus company to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital and amounts adequate to provide a sound passenger bus transportation system in this State, and take into account reasonable estimated or foreseeable future costs.

(g) Notwithstanding any provision of this section, the Commission may not investigate, suspend, review or revoke the operation of proposed new or revised rates, fares or charges if the proposed new or revised rates, fares or charges do not exceed the standard rates, fares or charges then in effect by the petitioning bus company for comparable interstate transportation of passengers.

(h) Any person may make complaint in writing to the Commission that any rate, fare, charge, classification, rule, regulation, or practice in effect, or proposed to be put in effect, is or will be in violation of this Chapter. Whenever, after holding a hearing, upon complaint, in an investigation, or upon its own initiative, the Commission finds that any individual or joint rate demanded, charged, or collected by any bus company for transportation of passengers in intrastate commerce, or any classification, rule, regulation or practice of the bus company affecting the rate or the value of the service provided, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial or constitute an unfair or destructive competitive practice, or otherwise contravenes the policies declared in this Chapter, or is in contravention of any provision of this Chapter, the Commission shall determine and prescribe the lawful rate, or the lawful classification, rule, regulation or practice to be put into effect.

(i) For purposes of this Chapter, rates, fares and charges established pursuant to this section shall be deemed fair, just and reasonable.

(j) Notwithstanding any other provision of this Chapter, the rates, fares and charges established for charter service by a bus company authorized and engaged in charter operations in this State shall be exempt from regulation by the Commission. A bus company authorized and engaged in charter operations shall file with the Commission a current statement of its rates, fares and charges as required by the Commission. (1985, c. 676, s. 15(6).)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Session Laws 1985, c. 676, s. 26 makes this section effective upon ratification but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission. The act was ratified July 10, 1985.

§ 62-153. Contracts of public utilities with certain companies and for services.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Article 9.

Acquisition and Condemnation of Property.

§ 62-190. Right of eminent domain conferred upon pipeline companies; other rights.

(a) Any pipeline company transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances by pipeline for the public for compensation, and incorporated under the laws of the State, or foreign corporations domesticated under the laws of North Carolina, may exercise the right of eminent domain under the provisions of the Chapter, Eminent Domain, and for the purpose of constructing and maintaining its pipelines and other works shall have all the rights and powers given railroads and other corporations by this Chapter and acts amendatory thereof. Nothing herein shall prohibit any such pipeline company granted the right of eminent domain under the laws of this State from extending its pipelines from within this State into another state for the purpose of transporting natural gas or coal in suspension into this State, nor to prohibit any such pipeline company from conveying or transporting natural gas, gasoline, crude oil, coal in suspension, or other fluid substances from within this State into another state. All such pipeline companies shall be deemed public utilities and shall be subject to regulation under the provisions of this Chapter.

(b) Liquid pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of assembly.

No liquid pipeline may be located within 50 feet of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches of cover in addition to that prescribed in Part 195, Title 49, Code of Federal Regulations.

Any liquid pipeline installed underground must have at least 12 inches of clearance between the outside of the pipe and the extremity of any other underground structure, except that for drainage tile the minimum clearance may be less than 12 inches but not less than two inches. However, where 12 inches of clearance is impracticable, the clearance may be reduced if adequate provisions are made for corrosion control. (1937, c. 280; 1951, c. 1002, s. 3; 1957, c. 1045, s. 2; 1963, c. 1165, s. 1; 1985, c. 696, s. 1.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, designated the first paragraph as subsection (a) and added subsection (b).

Article 11.

Railroads.

§ 62-235. Commission to inspect railroads as to equipment and facilities, and to require repair.

CASE NOTES

Inspection of Equipment and Facilities. — As to the jurisdiction of the Utilities Commission to require rail carrier to open drainage ditches along its tracks and to keep its drainage ditches open, see State ex rel. Utilities Comm'n v. Seaboard C.L.R.R., 62 N.C. App. 631, 303 S.E.2d 549, cert. denied and appeal dismissed, 309 N.C. 324, 307 S.E.2d 168 (1983).

§ 62-238.1. Ordinances regulating train speeds in municipalities filed with the Commission.

(a) When an ordinance limiting the speed of trains within the corporate limits of a municipality is enacted, pursuant to G.S. 160A-195, the city enacting the ordinance shall file with the Commission a certified copy of the ordinance plus one additional certified copy for each railroad corporation operating on the tracks through the affected city.

(b) The Commission shall mail a certified copy of each ordinance filed pursuant to subsection (a) of this section, by registered or certified mail with a return receipt requested, to the agent registered pursuant to G.S. 55-13 of each railroad corporation operating on the tracks through the affected city. Thereafter, the Commission shall notify the city of the date of receipt of the certified copy of the ordinance by the registered agent of each railroad corporation affected.

(c) No ordinance limiting train speed within the corporate limits of the city shall become effective until 20 days after the certified copies of the ordinance have been received by all of the registered agents of the railroads pursuant to subsection (b) of this section. (1985, c. 662, s. 1.)

Editor's Note. — Session Laws 1985, c. 662, s. 4 makes this section effective Oct. 1, 1985.

§ 62-239. To fix rate of speed through municipalities; procedure.

(a) If a railroad company is of the opinion that an ordinance of a municipality through which a line of its railroad passes regulating the speed at which trains may run while passing through said municipality is unreasonable or oppressive, such railroad company may file its petition before the Commission, within 20 days of receipt of the certified copy of the ordinance limiting the speed of the

trains within a city as required by G.S. 62-238.1(b), setting forth all the facts, and asking relief against such ordinance, and that the Commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, by registered or certified mail, to the mayor or chief officer of the town or municipality, together with a notice from the Commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the municipality named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the Commission shall hear the petition, but any hearing granted by the Commission shall be had at the municipality where the conditions complained of are alleged to exist, or some member of the said Commision shall take evidence, both for the petition and against it, at such municipality, and report to the full Commission before any decision is made by the Commission.

(1903, c. 552; Rev., ss. 1101, 1102, 1103; C.S., s. 1058; 1933, c. 134, s. 8; 1941, c. 97; 1957, c. 1152, s. 5; 1963, c. 1165, s. 1; 1985, c. 662, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, added the language beginning "within 20 days" and ending "by G.S. 62-238.1(b)" in the first sentence of subsection (a).

Article 12.

Motor Carriers.

§ 62-259. Additional declaration of policy for motor carriers.

In addition to the declaration of policy set forth in G.S. 62-2 of Article 1 of Chapter 62, it is declared the policy of the State of North Carolina to preserve and continue all motor carrier transportation services now afforded this State; and to provide fair and impartial regulations of motor carriers in the use of the public highways in such a manner as to promote, in the interest of the public, the inherent advantages of highway transportation; to promote and preserve adequate economical and efficient service to all the communities of the State by motor carriers; to encourage and promote harmony among all carriers and to prevent discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers; to foster a coordinated statewide motor carrier service; and to conform with the national transportation policy and the federal motor carriers acts insofar as the same may be practical and adequate for application to intrastate commerce. The provisions of this section and these policies are applicable to bus companies and their rates and services only to the extent with which they are consistent with the provisions of G.S. 62-259.1 and of the Bus Regulatory Reform Act of 1985. (1947, c. 1008, s. 1; 1949, c. 1132, s. 2; 1963, c. 1165, s. 1; 1985, c. 676, s. 16.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added the last sentence.

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

§ 62-259.1. Specific declaration of policy for bus companies.

The transportation of passengers, their baggage and express, by bus companies has become increasingly subject to competition from other forms of transportation which are unregulated or only partially regulated as to rates and services. It is in the public interest and it is the policy of this State that bus companies be partially deregulated so that they may rely upon competitive market forces to determine the best quality, variety and price of bus services, thereby promoting the public health, safety and welfare by strengthening and increasing the viability of this necessary form of transportation. (1985, c. 676, s. 17.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Session Laws 1985, c. 676, s. 26 makes this section effective upon ratification but provides that it shall not apply to pending litigation or to pending proceedings before the North Carolina Utilities Commission. The act was ratified July 10, 1985.

§ 62-260. Exemptions from regulations.

(a) Nothing in this Chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

(1) Transportation of passengers or property for or under the control of the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;

(2) Transportation of passengers by taxicabs when not carrying more than fifteen passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than fifteen passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in (8) of this subsection, shall

solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;

(3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;

(4) Transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft;

(5) Transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;

(6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services or transportation of pupils and employees to and from private or parochial schools or transportation to and from functions for students and employees of private or parochial schools;

(7) Transportation of any bona fide employees to and from their place(s) of regular employment;

(8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;

(9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair;

(10) Transportation of newspapers;

(11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;

(12) Transportation for and under the control of cooperative associations organized and operating under the Federal Agricultural Marketing Act, U.S.C.A. Title 12, § 1141(j), or under the State Cooperative Marketing Act, Chapter 54, Subchapter V, General Statutes of North Carolina, as amended, or for any federation of such cooperative associations; provided, such federation possesses no greater powers or purposes than such cooperative associations;

(13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;

(14) Transportation of raw products of the forest, including firewood, logs, crossties, stave bolts, pulpwood, and rough lumber, but not including manufactured products therefrom;

(15) Pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the

commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;

(16) Transportation by a bona fide private carrier, as defined in G.S. 62-3(22);

(17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle;

(18) Charter parties, as defined by this subdivision when such charter party is sponsored or organized by, and used by, any organized senior citizen group whose members are sixty (60) years of age or older. Such charter party shall be subject to subsections (f) and (g) of this section. "Charter party", for the purpose of this subdivision, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(f) Notwithstanding the exemption for transportation of passengers and property provided under subsections (a) through (e) of this section, all motor carriers transporting passengers for compensation under said exemptions or under any special exemptions granted by the Utilities Commission under G.S. 62-261 shall be subject to the same requirements for security for protection of the public as are established for regulated motor common carriers by the rules of the Utilities Commission pursuant to G.S. 62-268, and all such motor carriers transporting for hire under said exemption provisions shall further be subject to the same requirements for safety of operation of said motor vehicles as are required of regulated motor common carriers under the provisions of Chapter 20 and the regulations of the Division adopted pursuant thereto. The Division is authorized to promulgate rules and regulations for the enforcement of said requirements in the case of all such exempt operations, and the officers and agents of the Division shall have full authority to inspect said exempt vehicles and to apply all enforcement regulations and penalties for violation of said security regulations and safety regulations as in the case of regulated motor carriers.

(g) The owners of all motor vehicles used in any transportation for compensation which is declared to be exempt under this section shall register such operation with the Division of Motor Vehicles and shall secure from the Division of Motor Vehicles a certificate of exemption. (1947, c. 1008, s. 4; 1949, c. 1132, s. 5; 1951, c. 987, s. 1; 1953, c. 1140, s. 2; 1955, c. 1194, ss. 1, 2; 1959, c. 102, c. 639, s. 15; 1963, c. 1165, c. 1; 1967, cc. 1135, 1203; 1969, c. 681; 1971, cc. 856, 1192; 1973, c. 175; 1977, c. 217; 1979, c. 204, s. 1; 1985, c. 454, ss. 9-11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, substituted "fifteen" for "nine" in two places near the beginning of subdivision (a)(2), substituted "Chapter 20" for "this Chapter" in the first sentence of subsection (f), substituted "Division" for "Commission" in the first and second sentences of subsection (f), and substituted

"Division of Motor Vehicles" for "Utilities Commission" in subsection (g).

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

OPINIONS OF ATTORNEY GENERAL

Subdivision (a) (1) of this section specifically exempts political subdivisions from regulation by the Utilities Commission. See opinion of Attorney General to Mr. David D. King, Director of Division of Public Transportation, North Carolina Department of Transportation, 55 N.C.A.G. 76 (1986).

The Pasquotank-Perquimans-Camden-Chowan District Health Department has the authority to operate public transit on a fare paying basis, without establishment of a Transportation Authority. Subsection (a)(1) of this section specifically exempts political subdivisions of this State from regulation by the North Carolina Utilities Commission. See opinion of Attorney General to Mr. David D. King, Director of Division of Public Transportation, North Carolina Department of Transportation, 55 N.C.A.G. 76 (1986).

§ 62-261. Additional powers and duties of Commission applicable to motor vehicles.

The Commission is hereby vested with the following powers and duties:

(1) To supervise and regulate bus companies and to that end, the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage, newspapers, mail and light express, uniform system of accounts, records and reports and preservation of records.

(2) To supervise the operation and safety of passenger bus stations in any manner necessary to promote harmony among the carriers using such stations and efficiency of service to the traveling public.

(3) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.

(7) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.

(10) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.

(1947, c. 1008, s. 5; 1949, c. 1132, s. 6; 1953, c. 1140, s. 5; 1957, c. 65, s. 11; c. 1152, s. 7; 1961, c. 472, s. 9; 1963, c. 1165, s. 1; 1969, c. 723, s. 2; c. 763; 1973, c. 507, s. 5; 1985, c. 454, s. 12; c. 676, s. 18.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — Session Laws 1985, c. 454, s. 12, effective June 24, 1985, deleted subsection (3), relating to qualifications and maximum hours of service of drivers and their helpers and rules regulating safety of operations and equipment, subsection (7), relating to inspections, and subsection (10), relating to explosives or highly inflammable or combustible substances.

Session Laws 1985, c. 676, s. 18, effec-

tive July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, in subdivision (1) substituted "bus companies" for "common carriers of passengers by motor vehicle" and substituted "uniform system of accounts" for "uniform systems of accounts," and in subdivision (2) inserted "and safety" following "to supervise the operation."

§ 62-262. Applications and hearings other than for bus companies.

(a) Except as otherwise provided in G.S. 62-260[,] G.S. 62-262.1 and 62-265, no person shall engage in the transportation of passengers or property in intrastate commerce unless such person shall have applied to and obtained from the Commission a certificate or permit authorizing such operations, and it shall be unlawful for any person knowingly or wilfully to operate in intrastate commerce in any manner contrary to the provisions of this Article, or of the rules and regulations of the Commission. No certificate or permit shall be amended so as to enlarge or in any manner extend the scope of operations of a motor carrier without complying with the provisions of this section.

(b) Upon the filing of an application for a certificate or a permit, the Commission shall, within a reasonable time, fix a time and place for hearing such application. For applications by contract carriers of passengers, the Commission shall cause notice of the time and place of hearing to be given by mail to the applicant, to other motor carriers holding certificates or permits to operate in the territory proposed to be served by the application, and to other motor carriers who have pending applications to so operate. The Commission shall from time to time prepare a truck calendar containing notice of such hearings, a copy of which shall be mailed to the applicant and to any other persons desiring it, upon payment of charges to be fixed by the Commission. The notice or calendar herein required shall be mailed at least 20 days prior to the date fixed for the hearing, but the failure of any person, other than applicant, to receive such notice or calendar shall not, for that reason, invalidate the action of the Commission in granting or denying the application.

(f) to (h) Repealed by Session Laws 1985, c. 676, s. 19, effective July 10, 1985.

(j) After the issuance of a permit for the transportation of passengers, as provided in this section, such permit may thereafter be amended, changed or modified, by requiring the holder to furnish more or less transportation service, or by changing the routes over which service has been authorized, or by imposing other reasonable terms, conditions, restrictions, and limitations as public convenience and necessity or reasonable regulation of traffic upon the highways may require; provided, that the procedure in all such cases as to notice and hearing shall be the same as provided in this section for the issuance of a permit.

(*l*) The provisions of this section shall not be applicable to applications for certificates of authority by bus companies or related hearings. (1947, c. 1008, s. 11; 1949, c. 1132, s. 10; 1953, c. 825, s. 3; 1957, c. 1152, ss. 8, 9; 1959, c. 639, s. 11; 1963, c. 1165, s. 1; 1965, c. 214; 1981, c. 193, s. 4; 1985, c. 676, s. 19.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

It appears that a comma was intended in the first sentence of subsection (a) following the reference to "G.S. 62-260."

Effect of Amendments. —

The 1985 amendment, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added "other than for bus companies" at the end of the catchline, inserted the reference in subsection (a) to G.S. 62-262.1, substituted "applications by contract carriers of passengers" for "bus applications" near the beginning of the second sentence of subsection (b), deleted subsections (f), (g) and (h) relating to certificates for the transportation of passengers and authority of carriers thereunder, deleted "certificate or" preceding "permit" in three places in subsection (j) and added subsection (*l*).

CASE NOTES

I. IN GENERAL.

"Certificate" authorizes performance as common carrier, while "permit" authorizes performance as contract carrier. State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

Applied in State ex rel. Utilities Comm'n v. Pony Express Courier Corp., 58 N.C. App. 218, 292 S.E.2d 769 (1982).

§ 62-262.1. Certificates of authority for passenger operations by bus companies.

(a) Except as provided in G.S. 62-260, 62-262 and 62-265, no person shall engage in the transportation of passengers in intrastate commerce by motor vehicle without having applied for and obtained a certificate authorizing those operations from the Commission. It shall be unlawful for any person to knowingly or willfully operate in intrastate commerce in a manner contrary to the provisions of this Article or to the rules and regulations of the Commission. No certificate shall be amended to enlarge, or in any manner extend, the scope of operations of a bus company without complying with the provisions of this section.

(b) Any bus company desiring a certificate of authority to operate in intrastate commerce in this State over fixed routes, or to enlarge or in any manner extend the scope of its fixed route operations previously granted by the Commission, may do so by filing a verified application with the Commission and by paying the filing fee established by G.S. 62-300.

(c) The Commission shall issue a certificate of authority to an applicant for the transportation of passengers over a fixed route or to enlarge or extend authority previously granted, if the Commission finds that the applicant is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with the provisions of this Chapter, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

(d) In making any findings relating to public interest under subsection (c) of this section, the Commission shall consider, to the extent applicable, (i) the transportation policy of this State as it relates to bus companies under G.S. 62-259.1 and this Chapter; (ii) the value of competition to the traveling and shipping public; (iii)

the effect of issuance of the certificate on bus company service to small communities; and (iv) whether issuance of the certificate would impair the ability of any other fixed route carrier of passengers to provide a substantial portion of its fixed route passenger service, except that diversion of revenue or traffic from a fixed route carrier of passengers, alone, shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of its fixed route passenger service.

(e) Within 10 days after the filing of an application, the applicant shall provide notice to be given as required by Commission rule. If no protest, raising material issues of fact to the granting of the application, is filed with the Commission within 30 days after the notice is given, the Commission may, upon review of the record and without a hearing, issue its certificate of authority granting the requested operating authority, if it is satisfied that the applicant meets the requirements set forth in subsection (c) of this section.

(f) If protests are filed raising material issues of fact to the granting of the application, the Commission shall set the application for hearing, as soon as possible, and cause notice to be given as provided by its rules. At the hearing, the only issues for consideration are those set forth in subsections (c) and (d) of this section. The Commission shall issue its final order not later than 180 days after the application is filed.

(g) Any bus company authorized to transport passengers in intrastate commerce over fixed routes in this State and which in fact provides that service may, without filing a new application or paying further fees: (i) transport newspapers, express parcels or United States mail over the fixed routes on which it provides passenger transportation; (ii) provide charter operations to all points in the State; and (iii) transport charter passengers in the same motor vehicles with fixed route passengers.

(h) Any bus company seeking a certificate to engage solely in charter operations within the State, or to enlarge or in any manner extend the scope of its charter operations previously granted by the Commission, may obtain one by (i) filing a verified application for the authority with the Commission; (ii) paying the applicable filing fee as prescribed by G.S. 62-300; and (iii) demonstrating that it is fit, willing and able to perform the proposed charter operations.

(i) Within 10 days after filing of an application for charter operations, the applicant shall provide notice as required by Commission rule or regulation. If no protests to the granting of the application, raising material issues of fact, are received by the Commission within 30 days after the notice is given, the Commission shall issue its certificate granting the requested authority unless it determines that the applicant is unfit, unwilling or unable to perform the proposed operations. In the event of this determination, or if protests to the proposed operation raising material issues of fact are received, the Commission shall set the application for hearing, as soon as possible, and provide notice to be given as provided by its rules and shall issue its final order within 180 days after application is filed. At the hearing, the only issue for consideration shall be whether the applicant is fit, willing and able to perform the proposed charter operations and the issue of need shall not be considered. On the issue of its fitness, willingness and ability to perform the proposed charter operations, the applicant in its application and at any hear-

ing shall present evidence from which the Commission may find that: (i) the applicant has sufficient assets to perform properly the proposed operations; (ii) the operation will be conducted only with properly qualified drivers; (iii) the applicant will maintain safe, clean and attractive buses and equipment; (iv) the applicant will maintain insurance for the protection of the public as provided in this Chapter; (v) the applicant has sufficient equipment to conduct the proposed operation; and (vi) the applicant will observe all applicable laws, rules and regulations of this State.

(j) Any bus company authorized and engaged solely in charter operations shall not be required to transport passengers over a fixed route in this State as an incidence to its charter operations. (1985, c. 676, s. 20.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Session Laws 1985, c. 676, s. 26 makes this section effective July 10, 1985, but provides that it shall not apply to pending litigation or to pending proceedings before the North Carolina Utilities Commission.

§ 62-262.2. Discontinuance or reduction in service.

(a) When a bus company proposes to discontinue service over any intrastate route or proposes to reduce its level of service to any points on a route to a level which is less than one trip per day (excluding Saturdays and Sundays), it shall petition the Commission for permission to do so. Within 10 days after the filing of a petition, the Commission shall require notice to be given.

(b) Any person or the Public Staff may object, to the Commission, to the granting of permission to any bus company to discontinue or reduce transportation under this section. If neither objects to the granting of permission to discontinue or reduce service under this section, within 30 days after the notice as required by subsection (a) of this section, the Commission may grant the permission based on the record and without hearing.

(c) If, within 30 days after the notice as required by subsection (a) of this section, any person or the Public Staff objects in writing to the Commission to granting of such permission, the Commission shall grant such permission unless the Commission finds as a fact, that the discontinuance or reduction in service is not consistent with the public interest or that continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce. In making a finding under this subsection, the Commission shall accord great weight to the extent to which the interstate and intrastate revenues from the transportation proposed to be reduced or discontinued are less than the variable costs of providing the transportation, including depreciation for revenue equipment. The Commission may also consider, to the extent applicable, all other factors which are to be considered by the Interstate Commerce Commission in a proceeding commenced under 49 U.S.C. § 10935. For the purposes of this section, the bus company filing a petition for permission to discontinue or reduce service shall have the burden of proving (i) the amount of its interstate and intrastate revenues received for transportation to, from or between, but not through, points on the involved intrastate

route; and (ii) the system variable costs of providing the transportation.

(d) The Commission may make its determination with or without a public hearing. The Commission shall take final action upon the petition not later than 120 days after any written objections to the petition are filed.

(e) The provisions of G.S. 62-262(h) shall not be applicable to bus companies. (1985, c. 676, s. 21.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Session Laws 1985, c. 676, s. 26 makes this section effective July 10, 1985, but provides that it shall not apply to pending litigation or to pending proceedings before the North Carolina Utilities Commission.

Section 62-262(h), referred to in subsection (e) of this section, was repealed by Session Laws 1985, c. 676, s. 19.

§ 62-264. Dual operations.

CASE NOTES

Quoted in State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

§ 62-265. Emergency operating authority.

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Tar Heel Indus., Inc., 77 N.C. App. 75, 334 S.E.2d 396 (1985).

§ 62-266: Repealed by Session Laws 1985, c. 454, s. 13, effective June 24, 1985.

§ 62-268. Security for protection of public; liability insurance.

No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Division of Motor Vehicles such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. The Commission shall require that every motor carrier for which a certificate, permit, or license is required by the provision of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars ($50,000) because of injury to or destruction of property of others in any one accident; and the Commission may require any greater amount of insurance as may be necessary for the protection of the

public. Notwithstanding any rule or regulation to the contrary, the Commission shall not require that any insurance procured and filed be provided in any single policy of insurance or through a single insurer, if the insurers involved are otherwise qualified. A motor carrier may satisfy the requirements of the Commission by procuring insurance with coverage and limits of liability required by the Commission in one or more policies of insurance issued by one or more insurers.

Notwithstanding any other provisions of this section or Chapter, bus companies shall file with the Commission proof of financial responsibility in the form of bonds, policies of insurance, or shall qualify as a self insurer, with minimum levels of financial responsibility as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1). Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars ($1,500,000). (1947, c. 1008, s. 19; 1949, c. 1132, s. 19; 1963, c. 1165, s. 1; 1973, c. 1206; 1977, c. 920; 1985, c. 454, s. 14; c. 676, s. 22; 1987, c. 374.)

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — Session Laws 1985, c. 454, s. 14, effective June 24, 1985, substituted "Division of Motor Vehicles" for "Commission" in the first sentence.

Session Laws 1985, c. 676, s. 22, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added the last paragraph.

The 1987 amendment, effective June 15, 1987, added the final sentence of the second paragraph.

§ 62-270. Orders, notices, and service of process.

It shall be the duty of every motor carrier operating under a certificate or permit issued under the provisions of this Article to file with the Division of Motor Vehicles a designation in writing of the name and post-office address of a person upon whom service of notices or orders may be made under this Article. Such designation may from time to time be changed by like writing similarly filed. Service of notice or orders in proceedings under this Article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier. (1947, c. 1008, s. 29; 1949, c. 1132, s. 26; 1957, c. 1152, ss. 6, 11; 1963, c. 1165, s. 1; 1985, c. 454, s. 15.)

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, substituted "Division of Motor Vehicles" for "Commission" in the first sentence.

§ 62-275: Repealed by Session Laws 1985, c. 676, s. 23, effective July 10, 1985.

Editor's Note. — Session Laws 1985, c. 676, s. 26 makes this section effective July 10, 1985, but provides that it shall not apply to pending litigation or to pending proceedings before the North Carolina Utilities Commission.

§ 62-277: Repealed by Session Laws 1985, c. 454, s. 16, effective June 24, 1985.

§ 62-281: Repealed by Session Laws 1985, c. 454, s. 17, effective June 24, 1985.

Article 12A.

Human Service Transportation.

§ 62-289.3. Definitions.

As used in this Article:

(2) "Human service transportation" means motor vehicle transportation provided on a nonprofit basis by a human service agency for the purpose of transporting clients or recipients in connection with programs sponsored by the agency. "Human service transportation" shall also mean motor vehicle transportation provided by for-profit persons under exclusive contract with a human service agency for the transportation of clients or recipients, and such provider shall also qualify as a human service agency for the purpose of motor vehicle registration during the term of the contract. The motor vehicle may be owned, leased, borrowed, or contracted for use by or from the human service agency.

(1981, c. 792, s. 1; 1987, c. 407.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 18, 1987, inserted the present second sentence of subdivision (2), and inserted "or from" in the third sentence of subdivision (2).

Article 14.

Fees and Charges.

§ 62-300. Particular fees and charges fixed; payment.

(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commision, and no others:

(1) Twenty-five dollars ($25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.

(2) With each application for a new certificate or new permit for motor and rail carrier rights, the fee shall be two hundred fifty dollars ($250.00) when filed by Class 1 motor and rail carriers, one hundred dollars ($100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars ($25.00) when filed by Class 3 motor and rail carriers, and twenty-five dollars ($25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars ($25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.

(3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars ($500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars ($250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars ($100.00) for Class C utilities and twenty-five dollars ($25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.

(4) One hundred dollars ($100.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

(5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars ($250.00) for Class A utilities, one hundred dollars ($100.00) for Class B utilities, and twenty-five dollars ($25.00) for Class C and D utilities and twenty-five dollars ($25.00) for any other person seeking a certificate of public convenience and necessity.

(5a) With each application by a bus company for an original certificate of authority or for any amendment thereto or to an existing certificate of public convenience and necessity so as to extend or enlarge the scope of operations thereunder the fee shall be two hundred fifty dollars ($250.00).

(6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars ($250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars ($100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars

($25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.

(7) Ten dollars ($10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.

(8) Repealed by Session Laws 1985, c. 454, s. 18, effective June 24, 1985.

(9) One dollar ($1.00) for each page ($8^1/_2$ x 11 inches) of transcript of testimony, but not less than five dollars ($5.00) for any such transcript.

(10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar ($1.00) for any such order or record, plus five dollars ($5.00) for formal certification of any such paper, order or record.

(11), (12) Repealed by Session Laws 1985, c. 454, s. 18, effective June 24, 1985.

(1953, c. 825, s. 1; 1955, c. 64; 1957, c. 1152, s. 15; 1961, c. 472, ss. 2-4; 1963, c. 1165, s. 1; 1967, c. 1039; c. 1190, s. 7; 1969, c. 721, s. 2; 1971, c. 736, s. 2; 1975, c. 447, s. 1; 1977, c. 1003; 1977, 2nd Sess., c. 129, s. 32; 1979, c. 792; 1985, c. 311, ss. 1-4; c. 454, ss. 18, 19; c. 676, s. 24.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 676, s. 1 provides that the act shall be known as the "Bus Regulatory Reform Act of 1985."

Effect of Amendments. — Session Laws 1985, c. 311, ss. 1-4, effective July 1, 1985, inserted "or the Supreme Court" in subdivision (a)(1), inserted "and twenty-five dollars ($25.00) for any other person seeking a certificate of public convenience and necessity" at the end of subdivision (a)(5), inserted "or relief" near the end of subdivision (a)(7), and rewrote subdivision (a)(10), which: "Twenty cents (20¢) for each page reproduced by photostatic or similar process and for each page of an order which can be made available without the necessity of copying or reproduction."

Session Laws 1985, c. 454, effective June 24, 1985, deleted subdivisions (a)(8), (a)(11), and (a)(12), providing for various fees.

Session Laws 1985, c. 676, s. 24, effective July 10, 1985, but not applicable to pending litigation or to pending proceedings before the North Carolina Utilities Commission, added subdivision (5a).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1987

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina

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